

ORIGINAL

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

THE STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.)
)
STEVEN CARROLL DEMOCKER,)
)
Defendant.)
)

P1300

No. CR 2008-1339

BEFORE: THE HONORABLE THOMAS B. LINDBERG
JUDGE OF THE SUPERIOR COURT
DIVISION SIX
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA
WEDNESDAY, OCTOBER 28, 2009
10:04 A.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
PROBABLE CAUSE HEARING ON AGGRAVATING CIRCUMSTANCES

TESTIMONY OF DR. PHILLIP KEEN
TESTIMONY OF STEVEN PAGE
TESTIMONY OF DOUGLAS BROWN

ROXANNE E. TARN, CR
Certified Court Reporter
Certificate No. 50808

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OCTOBER 28, 2009
10:04 A.M.

APPEARANCES:

FOR THE STATE, MR. JOE BUTNER.
FOR THE DEFENDANT, MR. JOHN SEARS AND
MR. LARRY HAMMOND

THE COURT: Thank you. Be seated, please.

This is CR 2008-1339, continued hearing
with Chronis hearing in the State versus Steven Carroll
Democker matter. Mr. Democker is present in custody with his
attorneys, Mr. Hammond and Mr. Sears. The State is present
through Mr. Butner. Dr. Keen is on the stand.

The Court received a motion for
reconsideration with regard to certain testimony in the
Chronis hearing, and that motion is denied.

Mr. Butner, you may continue with your
examination of Dr. Keen.

DR. PHILLIP KEEN,
previously called as a witness, having been duly sworn,
testified further as follows:

DIRECT EXAMINATION RESUMED

BY MR. BUTNER:

Q. Okay. Dr. Keen. Let's see, where were we.

As I recall, we were talking about the
fact that you had reflected the scalp and were looking at the
pieces of the skull.

1 Do you recall that?

2 A. The fractures of the skull beneath the scalp
3 lacerations, yes, sir.

4 Q. Okay. And if I understood your testimony
5 correctly, basically with each impact to the head, there was
6 a corresponding laceration to the scalp.

7 A. I believe that's correct, yes, sir.

8 Q. And as a result of that, you were able to count,
9 basically, how many blows?

10 A. As a minimum of at least seven.

11 Q. And that was directly to the head; is that
12 correct?

13 A. To the head, yes, sir.

14 Q. And in terms of total number of blows, how many
15 did you count?

16 A. We have two others that are to the right arm, near
17 the elbow.

18 Q. Right. And then you indicated some to the facial
19 area; is that correct?

20 A. We have some blunt impact to the facial areas, but
21 they don't have the same features of the ones where an
22 instrument caused a laceration and fracture. We have
23 bruising of the lip, we have fracture of the nose, but I
24 don't know exactly how many of the impacts or the precise
25 mechanism, how those were inflicted.

1 Q. Okay. Is it your opinion that they were inflicted
2 separate from the ones that were done with some sort of
3 object?

4 A. Conceivably, they could be separate or they could
5 be a complication of. If you have a blow to the back of the
6 head while the face is against something, you can still
7 inflict the same kind of injury.

8 Q. I see. And so if I understand your testimony,
9 then, all total there are at least ten separate blows.

10 A. Something like that, yes, sir.

11 MR. BUTNER: Let's see. We were looking at 16
12 and 17. I guess those have already been admitted.

13 May I approach, Your Honor?

14 THE COURT: You may.

15 MR. BUTNER: And I would like to be able to
16 walk back and forth. Is that okay, Judge?

17 THE COURT: You may.

18 BY MR. BUTNER:

19 Q. Okay. Let's do Exhibit 16 first.

20 Right. Now, what is depicted in Exhibit
21 16?

22 MR. SEARS: Excuse me, your Honor. Would it
23 be all right if I stood near Dr. Keen so I could see what he
24 is looking at?

25 THE COURT: Yes.

1 MR. SEARS: Thank you.

2 MR. BUTNER: Dr. Keen, the judge is the person
3 you need to be showing these exhibits to. Okay? I am sure
4 that Mr. Sears will make sure that he gets to look at them.

5 THE WITNESS: Exhibit 16 is taken at the time
6 of the autopsy, and it is taken at a point in time during the
7 examination in which the scalp has been further reflected to
8 expose the skull, brain tissue has been removed, and I am
9 placing and supporting fractured portions of the skull to
10 realign to the approximate positions prior to impact.

11 BY MR. BUTNER:

12 Q. Okay. Is the skull in pieces in that picture?

13 A. It is.

14 Q. How many pieces are there, do you know?

15 A. I don't know, but you can see clearly in this
16 photo alone, five separate pieces of bone, and there are
17 still some gaps.

18 Q. Okay. Did you count all of the pieces in this
19 particular case?

20 A. No, I did not.

21 Q. Those pieces -- what is the cause for the skull
22 being in those pieces?

23 A. Blunt force impact exceeding the tensile strength
24 of the bone, resulting in fracture.

25 Q. Now, in your earlier testimony you indicated that

1 you hadn't really formulated an opinion as you were
2 proceeding through the autopsy, in terms of what type of
3 object caused this blunt force impact.

4 A. Had or had not?

5 Q. Had not, as were you proceeding. You had sort of
6 a preliminary estimate, so to speak, but you were reserving
7 judgment until you got down to, as you put it, I think, the
8 "hard tissue," the "bony tissue."

9 Do you recall that testimony?

10 A. Yes. That's partially true and partially not.
11 Let me clarify.

12 Q. Please do.

13 A. The injury to the arm was -- very initially caused
14 me to have a suspicion of the kind of instrument I likely
15 might be dealing with; namely, it had a club-like -- a
16 shaft-club type injury with a larger expanding bruise on the
17 triceps area.

18 The lacerations and fractures of the
19 skull also were consistent, but because of that initial
20 point, I still have scalp -- even though it has lacerations,
21 I have scalp covering bone. I want to wait until I see the
22 bone to see if it's consistent or if we even have more than
23 one kind of instrument involved.

24 Q. Okay. And now you are at the point in the
25 autopsy, as depicted by Exhibit 16 and 17, where you're

1 actually looking at the bone; is that correct?

2 A. Yes, sir.

3 Q. And what did you determine in terms of the type of
4 object that caused the injury once you were looking at the
5 bone?

6 A. It still has certain features. It's a firm
7 object. The point of impact is other than a thin rod. The
8 curved portions of fracture to the side of the skull are
9 consistent with the kind of contours that could be associated
10 with a golf club.

11 Q. And when you say "golf club," what type of golf
12 club are you speaking of? Are you talking about, you know,
13 an iron, so to speak, or are you talking about a wood, even
14 though woods are made of metal these days?

15 A. First of all, I'll preface my response to your
16 questions, I'm not a golfer. It's been years since I've
17 picked up a club to actually golf.

18 Q. Do you know what an iron is, though, as
19 differentiated --

20 A. I know what an iron is. I know what a club is.
21 The shape and contours are more
22 consistent with clubs than with irons.

23 Q. You mean with woods than irons?

24 A. Woods, yes.

25 Q. And when you were talking about that bruise, that

1 was -- would you demonstrate for us with your own body, so to
2 speak, where the bruise was on the -- near the triceps area.

3 A. May I stand, maybe?

4 Q. Yeah, that would be a good idea.

5 A. We have two impacts across the arm, and right
6 behind and above the elbow was expanding bruise area, which I
7 felt was consistent with the head of a club.

8 Q. Was there indentation in the arm and muscle area,
9 in that area that you have been describing?

10 A. The only patterned mark is that of the rod-like
11 injury, which would be consistent with a shaft impact.

12 What was expanding, which was clearly
13 larger than the rod-like injury, was a bruise, and it did not
14 have laceration, did not have pattered impact or
15 indentation.

16 Q. Okay. All right. So, going to Exhibit No. 17,
17 what is depicted in Exhibit 17?

18 A. The photo in Exhibit No. 17 is of the interior of
19 the skull, on the base of the skull, demonstrating the
20 multiple basilar skull fractures, as well as the frontal
21 fractures across the sphenoid wings, and it shows multiple
22 comminuted fractures of the skull.

23 Q. Okay. Now, when you say "basilar skull
24 fractures," would you explain what area of the skull you are
25 speaking about.

1 A. If you visualize the interior of the skull where
2 the brain resides, anything that's on the bottom of the case
3 that holds the brain, that's basilar skull. And so we're
4 talking about the area of the skull above the eyes, above the
5 ears, the cup-shaped area of the skull to hold the brain. So
6 the bottom of that cup is the base.

7 Q. All right. And is that indicative of the severity
8 of the blows?

9 A. Yes, it is.

10 Q. How so?

11 A. They -- absent a directional impact that is coming
12 from below to produce these kinds of injury, you have to have
13 a rather significant blow from above to exert the forces to
14 shatter on the bottom. And the only places that we have from
15 below is we have a broken nose, which you have already seen
16 the photo of, and we have some blackening of the eyes and the
17 lip. But those don't show the kind of impact that would
18 themselves result in the basilar skull fracture.

19 Q. So these are severe blows to the upper part of the
20 head, if I understand your testimony?

21 A. Yes, sir.

22 Q. And did you continue with an examination of the
23 skull beyond what is depicted in 16 and 17?

24 A. I did.

25 Q. What did you do after that?

1 A. What I did was actually a consequence of something
2 that I attempted to do. And what I attempted to do was to
3 refer the body for examination to the Maricopa County Medical
4 Examiner's Office with Dr. Fulginiti. And when that was
5 rejected, we brought the body back, and I then did a partial
6 reconstruction without removing the head and without boiling
7 the bones down.

8 And I accomplished this by placing a
9 Styrofoam ball inside the cranial vault where the brain
10 normally would have been, covering it with a paper mache-like
11 material so that it could fill up the residual space, and
12 then applying these pieces of fractured bone over the
13 surfaces, re-approximating them.

14 Q. I understand what you are saying.

15 Let me back up for just a second and show
16 you what's already been admitted as Exhibit 18.

17 Is this the bruising that began to
18 exhibit itself to the upper right arm --

19 A. Yes, sir.

20 Q. -- in conjunction with those rod-like marks on the
21 forearm?

22 A. It is, yes, sir.

23 Q. And that is what you were talking about when you
24 said that you thought that a golf club was the instrument?

25 A. Yes, sir.

1 Q. Let me show you what's been marked as Exhibits 49
2 and 50. Actually, I am going to show you what has been
3 marked as Exhibit 50, first.

4 Do you recognize what is depicted in
5 that?

6 A. Yes, sir.

7 Q. What is it?

8 A. This is a photo of the beginning -- we're in the
9 midst of -- we haven't completed it -- we're in the midst of
10 reconstructing the general contours.

11 What we are seeing in the background is a
12 fainter pink from the material over the Styrofoam ball and
13 we're seeing portions of fractured bone applied over the
14 surfaces.

15 Q. And is this a picture of part of the process that
16 you were talking about when you were reconstructing the skull
17 over this Styrofoam?

18 A. It is. And the particular perspective is coming
19 up from above and to the right, coming down from the top of
20 the head, to the right side.

21 MR. BUTNER: I would move for Exhibit 50 to be
22 admitted at this time.

23 MR. SEARS: No objection.

24 THE COURT: 50 is admitted.

25 MR. BUTNER: Thank you.

1 Q. And then let me show you what's been marked as
2 Exhibit 49.

3 And what is that?

4 A. It's another view at the time, and this time with
5 a scale in the photo. And the view of this photo is from
6 above and behind, coming down just to the right over the
7 occiput and back on top of the head.

8 Q. Okay. So that's another picture of that process
9 that you were engaged in; is that correct?

10 A. Yes, sir.

11 Q. And when you reconstructed the skull in that -- in
12 that process, so to speak, what was the purpose of doing
13 that?

14 A. To get a better idea of the actual dimensions and
15 shape of the objects -- object or objects that may have
16 produced the fractures.

17 Q. Okay. In other words, a clearer picture of the
18 lines of delineation on the skull from the instrument that
19 caused those fractures?

20 A. That's a fair way to characterize it. I was
21 looking at two or three components.

22 At the time of the initial autopsy, there
23 are several fractured portions of bone which are so dislodged
24 that they're not in place. They actually -- when I reflect
25 the scalp back, they fall out on the table. It's an attempt

1 to decide where those really were before they were fractured.
2 And so that is part of the process.

3 And also to see -- try to get not only
4 dimension, size, and location, but to try to get a
5 sequencing, if I could, which ones had to occur earlier than
6 others.

7 Q. Okay. And sort of like putting a puzzle back
8 together, if I understand your testimony; is that correct?

9 A. It is.

10 Q. And you were not able to do that unless you put
11 that Styrofoam on the inside, so to speak, so that it could
12 support the bones?

13 A. Well, that's one way of doing it. There are
14 various ways to do it. That was the way I chose to do it.

15 Q. Let me show you what's been marked as Exhibit 51.

16 Is this part of that -- is this a picture
17 of that ongoing process that you were just describing?

18 A. Yes. It's actually a little bit later in the
19 process, but it is taken at the time that I was doing this
20 process.

21 And this was taken to show a comparison
22 between the fracture lines and a possible type of instrument.

23 Q. In fact, you did get a golf club -- a metal wood,
24 so to speak, to compare to those fracture lines; is that
25 correct?

1 A. One was obtained and brought to the office by the
2 sheriff's office for purposes of comparison, yes, sir.

3 Q. And did you compare it to those fracture lines on
4 the skull?

5 A. To some of them, yes, sir.

6 Q. What were the results of that comparison?

7 A. Consistency. Some of the fractures were certainly
8 consistent with being produced by it -- or similar.

9 Q. How many would you say were consistent with being
10 produced by it?

11 A. Well, two or three had very definite curvatures --
12 one on the right side and a couple -- one or more over the
13 left side.

14 It becomes more difficult to specify once
15 you have produced the fracture and then you produce a
16 secondary fracture, and you comminute it because you now have
17 fractured some of the original details. With where there --
18 where there was a sharp line, a fracture from a larger piece
19 of bone, you could make out a very definite curve, which was
20 not following the usual stress lines of bone, and would be
21 mimicking whatever produced the fracture.

22 Q. And when you put the golf club adjacent to the
23 fracture, did it match the fracture lines?

24 MR. SEARS: Your Honor, I object to the
25 witness testifying from an exhibit that has not been admitted

1 yet. If the State intends to move this, I have an objection.

2 But they're clearly going beyond that,
3 and Dr. Keen is looking at it and testifying from it.

4 THE COURT: Overruled.

5 THE WITNESS: In my opinion, it was
6 consistent.

7 BY MR. BUTNER:

8 Q. What is depicted in Exhibit 51? You indicated
9 that that was a photograph taken later in the process of this
10 examination and comparison; is that correct?

11 A. Yes, sir.

12 Q. And were you present when the photograph was
13 taken?

14 A. Yes, sir.

15 MR. BUTNER: I would move for the admission of
16 Exhibit 51.

17 MR. SEARS: Objection. I have a question or
18 two on voir dire, your Honor.

19 THE COURT: You may.

20 MR. SEARS: Thank you.

21 VOIR DIRE EXAMINATION

22 BY MR. SEARS:

23 Q. Dr. Keen, in fact, Exhibit 51 for identification
24 in front of you was taken on or about July 15th of last year;
25 isn't that right?

1 A. Actually, based upon Exhibit 50 -- there is a date
2 in Exhibit 50, which was July 14. And we did do them all on
3 one day, so this was probably on the 14th.

4 Q. Not at the time of the autopsy?

5 A. Not at the time of the initial autopsy, no, sir.

6 Q. So you were retaining Ms. Kennedy's body, and a
7 number of days later the sheriff's department contacted you
8 and brought out a golf club, which they wanted you to look
9 at, and they wanted to look at that golf club in relation to
10 these injuries to Ms. Kennedy's skull; is that right?

11 A. We both actually wanted to. They brought it, but
12 we both wanted to look at it.

13 Q. Whose idea was it to bring a particular golf club
14 out there -- the police or yours?

15 A. A particular would have to be police, because I
16 didn't have a particular one in mind.

17 Q. Did you direct any way the kind of golf club that
18 you wanted them to obtain, or was that something they
19 intended to do on their own?

20 A. I think it's all their work. I was aware of some
21 investigation that was ongoing, but the actual selection,
22 that's law enforcement, not mine.

23 MR. SEARS: Your Honor, my objection is this:
24 This is a Chronis hearing to determine whether probable cause
25 exists for one or more of the alleged aggravators in this

1 case.

2 At this point, the only aggravator
3 alleged that I can see implicated by Dr. Keen's testimony at
4 this point would be F-6. Because F-6 focuses on the injuries
5 and the reaction of the victim to the injuries, the kind of
6 instrument involved in inflicting those injuries is
7 irrelevant.

8 So that's my objection. This is all
9 irrelevant testimony.

10 THE COURT: Overruled.

11 Any other objections to 51?

12 MR. SEARS: No, Your Honor.

13 THE COURT: 51 is admitted.

14 DIRECT EXAMINATION RESUMED

15 BY MR. BUTNER:

16 Q. Okay. In this process where this striking of the
17 head with a golf-club-like object was occurring, can you
18 determine, in looking at the injuries, what injury or
19 injuries were the fatal injury or injuries?

20 MR. SEARS: Your Honor, I object. We have
21 made this point before. I will make it again today, and I
22 will ask for a continuing object.

23 Dr. Keen expressed no such opinion about
24 which injuries were fatal. In fact, from his report on
25 Page 3, he says: "The injuries are simply numbered with no

1 intent to indicate order of infliction or severity of
2 injury."

3 I would object to Dr. Keen being
4 permitted to advance a new undisclosed opinion today in this
5 case.

6 And to the extent that the State intends
7 to continue to elicit testimony from Dr. Keen about matters
8 not previously disclosed, I ask that the Court grant us a
9 continuing objection. But for purposes of this question and
10 answer, that is my objection.

11 THE COURT: I will grant you the continuing
12 objection to that line, based on what you've already
13 presented to me in the last hearing, as well as today, and I
14 will overrule the objection.

15 BY MR. BUTNER:

16 Q. Do you remember my question? I will ask it again.

17 Can you determine, based upon your
18 examination, which injury or injuries were the fatal ones?

19 A. Actually, the summary of my autopsy attributes
20 death to them -- the blunt force cranial cerebral injuries.
21 And specifically, any of these skull fractures that are
22 depressed are potentially lethal. The combination of all of
23 them, obviously, was.

24 Q. Is death from one of these injuries instantaneous?

25 A. Not necessarily.

1 Q. Would you describe for us the mechanism, so to
2 speak, of how someone dies from an jury or injuries like
3 this?

4 A. Death can occur quite rapidly, but the usual
5 sequence from this kind of injury is immediate loss of
6 consciousness. Whether that loss of consciousness proceeds
7 to death or not depends upon how much disruption there is of
8 the lower central brain stem structures.

9 In this case, there are some basilar
10 skull fractures, which accelerate the time in which that
11 damage does occur at that level.

12 So I can't tell you which blow, with the
13 combination sequence of these blows, was such to cause
14 swelling in the drive centers for both respiratory and
15 cardiac functions and then death.

16 Q. Did you see indications in your examination that
17 the victim was conscious during some of these blows?

18 MR. SEARS: Foundation as to which blows.

19 THE COURT: Overruled.

20 You may answer.

21 THE WITNESS: I don't have an opinion as to
22 consciousness from the head blows, beyond whatever may have
23 happened from the face. Because I don't have a specificity
24 to the face, and I don't have a chronology of the facial
25 injuries, I don't know when they occurred.

1 Once any one of the blows to the head
2 occurred, then there was a loss of consciousness.

3 The blows to the arm, however, are
4 consistent with that portion of the body being placed between
5 the assailant and the victim and were more likely while they
6 were still conscious.

7 BY MR. BUTNER:

8 Q. Those blows to the arm -- in essence, the arm is
9 in a defensive position at the time of those blows?

10 A. Correct.

11 Q. And so that indicates consciousness or
12 unconsciousness to you?

13 A. Consciousness.

14 Q. And the person who is receiving these blows, are
15 they suffering when they receive these blows?

16 MR. SEARS: Foundation as to which blows.

17 THE COURT: Sustained.

18 Rephrase.

19 BY MR. BUTNER:

20 Q. In regard to the blows to the face, first of all,
21 the blow that broke the nose and the one that is to the upper
22 left forehead, as I recall -- first of all, is it your
23 opinion that the person was conscious or unconscious when
24 they received those blows?

25 A. Can't tell with a definitive statement, because I

1 don't know precisely when the facial blows occurred.

2 The fractures across the back of the
3 skull are such that we have left-to-right fracturing in the
4 parietal area, and at least one of these abuts upon
5 pre-existing fractures, so we know that there is secondary
6 fractures to pre-existing fractures to the back of the head.
7 The first one would be enough to cause loss of consciousness.
8 Whenever those occurred, at that point they become
9 unconscious.

10 If the facial blows were prior to any of
11 the blows to the cranial vault or the top of the head, then
12 they would be conscious then, but I can't say that they were.

13 Q. Okay. But you have opined that the blows to the
14 arm occurred while the person was conscious; right?

15 A. Yes, sir.

16 Q. And those caused injury to the person; is that
17 correct?

18 A. Yes, sir.

19 Q. And did those, in your opinion, cause suffering to
20 the person?

21 A. Suffering on two fronts, yes, sir.

22 Q. Would you explain what you mean "suffering on two
23 fronts."

24 A. Well, one is the actual physical discomfort from
25 the blows. And we have actually two episodes. We are going

1 to have two episodes of physical discomfort from the impacts.

2 And the secondary aspect is the awareness
3 that you are being struck, which is psychological, as opposed
4 to physical pain.

5 Q. Okay. And after that, were you able to determine
6 the sequence of blows?

7 A. Not definitively, other than the blows -- we
8 certainly have blows to the back of the head fairly early on.

9 Q. Now the blows to the arm and upper arm area, are
10 those from the front or from the rear?

11 A. They are mostly from the front. They may be
12 somewhat to the side, but it's more front than rear.

13 Q. Okay. And so presumably, then, the person was at
14 least seeing their attacker at that point; is that correct?

15 A. Yes, sir.

16 Q. And then the blows to the head area, were you able
17 to determine, kind of, the direction of those various blows?

18 A. We have blows that are occurring to the exposed
19 right side of the head, and we have blows that are occurring
20 to the exposed left side of the head. So the position of the
21 victim's head relative to the position of the assailant
22 changes during the course of the sequence of delivering them.

23 Q. So in other words, this person is receiving -- the
24 victim is receiving blows in regard to the arm, first of all,
25 from that person's right side; is that correct? The victim's

1 right side?

2 A. Right and in front.

3 Q. Right and in front?

4 A. Both.

5 Q. Okay. And then in regard to the blows to the
6 head, the person receives blows to the right side of the
7 head?

8 A. Yes, sir.

9 Q. And then do they receive blows to the rear of
10 their head?

11 A. It is kind of a progression. There are some that
12 are a little more rear than the right.

13 But unless you are directly on the
14 midline -- there really aren't very many directly on the
15 midline or to the right of the midline or the left of the
16 midline, so I have mostly right and left.

17 Q. Okay. So we've got blows to the right side of the
18 head, and then we've got blows to the left side of the head;
19 is that correct?

20 A. Yes, sir. And we have, then, a blow to the left
21 front.

22 Q. And the left front. Okay.

23 And in regard to those blows to the face
24 and the left front, if I understood your earlier testimony,
25 you are not sure whether the victim was struck from the front

1 or they got hit from the rear and their face struck something
2 to cause that; is that correct?

3 A. That's correct.

4 Q. Would it be fair to state that this beating that
5 this victim sustained went basically around the victim -- all
6 the way around?

7 A. It's fair to say.

8 Q. And in your opinion, Doctor, did the victim suffer
9 as a result of this beating?

10 A. To what I have already expressed the degree of
11 suffering, yes, sir.

12 Q. Are there blows to the head that could have been
13 sustained by the victim and they still remained conscious?

14 A. Depending upon the sequence of when they were
15 delivered, some of them yes, but most of them no. Almost all
16 of these -- certainly those that result in depressed
17 fractures, you don't remain conscious with those.

18 Q. But the fractures that were not depressed, you can
19 remain conscious with those?

20 A. For example, fractures to the nose. You could be
21 conscious even after that.

22 Even the fracture to the forehead is
23 somewhat problematic.

24 But certainly all of the others, you are
25 not going to be conscious with those.

1 Q. Did you see indications on the victim's body when
2 you examined it that there was a struggle at the time that
3 the victim was receiving these blows?

4 MR. SEARS: Your Honor, I am going to renew my
5 objection. That is clearly nothing that Dr. Keen has ever
6 expressed an opinion about. And I also think it's not
7 relevant.

8 THE COURT: Overruled.

9 You may answer.

10 THE WITNESS: Difficult to characterize the
11 injuries that I observed as "struggle." Victim of assault,
12 yes.

13 There is one injury that might be
14 characterized as struggle. I did not. But there was a
15 fractured fingernail that we don't know the circumstances of
16 how that occurred. That could be an example of grasping for
17 something. But I don't think I have anything else that I
18 could characterize in this as necessarily indicative of
19 struggle.

20 BY MR. BUTNER:

21 Q. What about the abrasions on the side of the
22 victim's body -- the side and the rear, so to speak?

23 A. Could still be inflicted in the process of going
24 down in that particular environment at that time.

25 Q. Okay. As the victim was falling, so to speak?

1 A. As they were falling and as the attack continued.

2 Q. I would like to show you what has been marked as
3 Exhibit No. 52.

4 What is depicted in Exhibit 52?

5 A. 52 is the another photo from the right side of the
6 head at the time of this reconstruction on July 14th, as
7 reflected in the photo with the date in it. And it is
8 showing additional portions of bone applied over the
9 Styrofoam ball.

10 Q. And does it show a curve-shaped injury in
11 Exhibit 52?

12 A. At least one. Probably more than one.

13 Q. Are there blows that were struck to the right side
14 of the victim's head that caused a fracture, so to speak, and
15 then another blow was superimposed on that other fracture?

16 A. Yes, sir.

17 Q. And what is indicative of that?

18 A. When a fracture line stops against another
19 fracture line, it only does so because the other fracture
20 line is there first. It's just like the way glass breaks.

21 Q. So this person was struck, in your opinion, how
22 many times on the right side of their head -- if you can make
23 a determination?

24 A. I'm probably going to have to go back and look at
25 the photo of the lacerations.

1 There are at least two probably -- at
2 least two in here on the right side -- one higher and one
3 lower.

4 Q. Okay. Let me show you, first of all, what has
5 been marked as Exhibit No. 28.

6 What is depicted in that?

7 A. This is a photo that's taken, again, at the
8 July 14th -- on the reconstruction occasion. And it is taken
9 at a time when I've already placed the Styrofoam inside to
10 where the brain would have been before. I placed pieces of
11 bone over the Styrofoam to reposition, to re-approximate
12 where they were before, and then I've drawn the scalp back up
13 over this to show the defects in the scalp that overlie on
14 those fractures.

15 Q. And which side of the head is that?

16 A. Right.

17 MR. BUTNER: I would move for the admission of
18 Exhibit 28.

19 MR. SEARS: No objection.

20 THE COURT: 28 is admitted.

21 BY MR. BUTNER:

22 Q. Now, let me show you what has been marked has
23 Exhibit No. 67.

24 What is depicted in Exhibit 67?

25 A. 67 is taken at the same time, although the date is

1 not in this photo. But it's taken from the left side,
2 showing the repositioning of some of the bone fragments, the
3 multiple fractures, and a scale in the photo.

4 Q. Okay. And in looking at Exhibit 67, you were
5 present when that photo was taken; right?

6 A. I was.

7 Q. Okay. And this is part of your reconstruction of
8 this skull?

9 A. Yes, sir.

10 MR. BUTNER: I would move for Exhibit 67 to be
11 admitted.

12 MR. SEARS: No objection.

13 THE COURT: 67 is admitted.

14 BY MR. BUTNER:

15 Q. Now that's the left side of the head; right?

16 A. It is.

17 Q. I should say "left side; correct"?

18 A. It is the left side of the head.

19 Q. In looking at the left side of the head, can you
20 tell how many blows were inflicted upon the left side of the
21 skull?

22 A. It gets more problematic here because they are
23 comminuted. You have a superimposed fracture, and then a
24 secondary fracture, and another fracture. But there are at
25 least three impacts that occurred to this portion of the

1 head.

2 Q. So at least three to the left side and at least
3 two to the right side?

4 A. Yes, sir.

5 Q. And if I understood your earlier testimony, it
6 actually was your belief that there were probably three to
7 the right side and three or four to the left side.

8 A. There are two that I characterize as definitely
9 being to the right.

10 And when you get back in the occipital
11 region, is it left or right, and then we have this aggregate
12 of three or four on the left side.

13 Q. And when you say "comminuted fractures," what are
14 you describing in that photo as a comminuted fracture?

15 A. The pieces just become shattered. We have
16 multiple pieces. Instead of having just a clean break, we
17 have multiple pieces that break away from one another.

18 Q. Shattering of the bone?

19 A. Yes, sir.

20 Q. Is that indicative of the severity of the blow?

21 A. In general, it is, yes.

22 Q. And is it also indicated that there was probably
23 another fracture there that preceded that other blow?

24 A. Yes, sir.

25 Q. And in looking at Exhibit 67-A, are you able to

1 see definitive fracture lines that indicate the type of
2 instrument that caused the fracture?

3 MR. SEARS: Objection. Relevance.

4 THE COURT: Overruled.

5 THE WITNESS: Some of the fractures have
6 curvature as opposed to straight lines. But because of the
7 comminuted character of the fracture, you don't see as long a
8 cord of fracture in the bone to reproduce this same length of
9 curvature of an object.

10 There are curved areas in here which
11 still have the same radius of curvature, but we just don't
12 have the same lengths. So it's not as definitive as the
13 other ones.

14 BY MR. BUTNER:

15 Q. Okay. The "others" being the ones on the right
16 side?

17 A. Correct.

18 Q. And let me show you what's been marked as
19 Exhibit 68.

20 Do you recognize what's depicted in
21 Exhibit 68?

22 A. Yes, sir.

23 Q. What is it?

24 A. This is during the time of the reconstruction.
25 This is skull bones being placed over the Styrofoam. You can

1 actually see the Styrofoam peeking through portions of the
2 fracture. It is very similar to one previous exhibit. It is
3 virtually the same photo as Exhibit No. 52, without the date.

4 Q. Okay. And in regard to this photo, what side of
5 the head is it?

6 A. Right side.

7 MR. BUTNER: I'd move for the admission of 68.

8 MR. SEARS: No objection.

9 THE COURT: 68 is admitted.

10 BY MR. BUTNER:

11 Q. In regard to Exhibit 68, can you see a more
12 definitive type fracture lines on that side of the head?

13 A. Yes, sir.

14 Q. And would you point out to the Court what you are
15 talking about when you say a more definitive fracture lines?

16 A. This arc of curvature that is on the superior
17 surface of the more front and side impact is one.

18 There is another curvature that is
19 occurring a little lower than the second one.

20 MR. SEARS: Thank you.

21 BY MR. BUTNER:

22 Q. Is that curvature of the fracture in the
23 definitive line, is that what caused you to think that a
24 golf-club-type object caused that injury?

25 A. Yes, sir. And it is very similar to the contour

1 which we have already seen in one other photo from the left
2 side with a golf club head in the photo where you can see the
3 same kind of contour.

4 Q. Did the victim receive blows to their head while
5 they were unconscious, in your opinion?

6 A. Yes, sir.

7 Q. Are you able to determine how many?

8 A. Not with great accuracy. But if there are seven
9 blows and one is enough to produce unconsciousness, there
10 could be six.

11 Q. As many as six?

12 A. As many as six.

13 Q. And are each of the blows that this victim
14 received to their skull and head area -- not counting the
15 face and left forehead, but the right and left side -- are
16 each of those blows sufficient to cause death?

17 MR. SEARS: Asked and answered.

18 THE COURT: Sustained.

19 BY MR. BUTNER:

20 Q. In your opinion, Dr. Keen, was the victim in this
21 homicide defenseless at times that they received some of
22 these blows?

23 A. Yes, sir.

24 Q. And which blows were the ones that the victim was
25 defenseless during?

1 A. Any that were sustained after they were
2 unconscious.

3 Q. And you are talking about the ones to the head,
4 then?

5 A. Yes, sir.

6 Q. And that would be as many as six inflicted upon
7 the victim while they were unconscious?

8 A. Yes, sir.

9 Q. While a person is unconscious and receiving these
10 kinds of blows, do you have an opinion as to whether they are
11 still feeling pain or not?

12 A. I have an opinion.

13 Q. And what is that?

14 A. No.

15 Q. Because they have lost consciousness?

16 A. Because they have lost consciousness.

17 Q. Do you have an opinion as to how many blows the
18 victim received where they were feeling pain, in this
19 particular case?

20 A. At least three.

21 Q. And how would you characterize the nature of the
22 attack that this victim received, as a result of your
23 examination?

24 MR. SEARS: Objection as to form. Vague.
25 Ambiguous.

1 THE COURT: Sustained.

2 Rephrase.

3 BY MR. BUTNER:

4 Q. Are you able to characterize the nature of the
5 attack that this victim sustained?

6 MR. SEARS: Same objection, as to "nature of
7 the attack."

8 THE COURT: Sustained.

9 BY MR. BUTNER:

10 Q. What type of attack was this that the victim
11 sustained, Dr. Keen?

12 MR. SEARS: Relevance.

13 THE COURT: Overruled.

14 THE WITNESS: It's in my opinion it's a
15 vicious, multiple-assault attack.

16 BY MR. BUTNER:

17 Q. And what makes it multiple assault?

18 A. The multiplicity of the injuries to the head
19 beyond what would be necessary to render one unconscious or
20 even deceased.

21 Q. And what makes it vicious?

22 A. Just that, the multiplicity of it. Well, no.
23 There are two things. That's one aspect.

24 The other aspect is the force that
25 produced the degree of depressed fractures, as well as

1 comminuted fractures, is not a light impact. It's a heavy
2 impact.

3 Q. Have you seen cases like this where there were
4 similar sorts of injuries?

5 A. I have seen several cases that share some
6 similarities with this, and many of this case are in
7 themselves rather unique.

8 Q. And were those other cases, in essence, the same
9 sort of attack; that is, a vicious multiple assault?

10 A. Yes, sir.

11 Q. In regard to your report -- it's already admitted
12 into evidence -- you pointed out something to me before you
13 resumed the stand today; is that correct?

14 A. I did.

15 Q. And what was that, sir?

16 A. There is an error, and it's an error because there
17 was a drop down that didn't get picked up earlier. And I'll
18 refer to -- I don't know what page I have to see, but the
19 very last sentence under the "Gross Examination" is an
20 incorrect statement. It is a conflict with everything else
21 I've said in the report and with everything else that we have
22 seen here.

23 Specifically, the sentence reads: "There
24 are no hemorrhages or fractures of the osseous structures of
25 the floor of the cranial vault." There obviously are images

1 of multiple fractures of the floor of the cranial vault.
2 That sentence should not have appeared in that line. It's an
3 error.

4 MR. SEARS: I am not with Dr. Keen. If
5 somebody would point to the page.

6 THE COURT: It would be helpful to the Court
7 and to Mr. Sears if you could point out the page.

8 MR. BUTNER: I have the report right here.
9 I'm trying to find it. I'll give it to the doctor, since he
10 probably knows better where to look.

11 THE COURT: Do you have Exhibit 19?

12 MR. BUTNER: I was just going to say that.
13 Yes, your Honor. It's Exhibit 19, I believe.

14 THE WITNESS: Page 8 of the exhibit, Bates
15 stamp 559, just above the paragraph on "Toxicology," the last
16 sentence should be deleted, because it's an incorrect
17 statement and it's in conflict with the body of the report,
18 as well as the facts of the case.

19 MR. BUTNER: You said page --

20 THE WITNESS: Page 8, the last sentence under
21 "Skull and Cranial Contents."

22 MR. BUTNER: Thank you. I have no further
23 questions of the witness at this time.

24 MR. SEARS: Could we possibly have a
25 five-minute recess before I start the cross, your Honor?

1 THE COURT: You bet. We'll take a five-minute
2 recess.

3 MR. SEARS: Thank you.

4 (Brief Recess.)

5 THE COURT: The record reflects the same
6 persons I previously mentioned.

7 Mr. Sears, you may commence with cross.

8 CROSS-EXAMINATION

9 BY MR. SEARS:

10 Q. Good morning, Dr. Keen.

11 A. Good morning.

12 Q. In the spirit of setting things straight, do you
13 have Exhibit 19, your report, in front of you?

14 A. I do, yes, sir.

15 Q. Would you want to take a look at the first page,
16 Paragraph 2-A, and tell me whether you saw patterned
17 rod-style contusions on her left or her right forearm?

18 A. 2-A. Right.

19 Q. Would you like to make that change on Exhibit 19?

20 A. Yes, sir. Good pick up.

21 Q. She had no injuries of that nature on her left
22 forearm, did she?

23 A. No, she did not. And that is probably the most
24 common mistake that's made in medical examiner reports,
25 because we are the opposite side they are. We are looking to

1 our left as their right. I would say that that's the most
2 common error in the report.

3 Q. And that is -- that's an error, here; correct?

4 A. In this case it's an error, and it should be right
5 forearm, not left.

6 Q. Okay. Now, can I ask you some questions here this
7 morning about how the autopsy was conducted, beginning with
8 the time and length of the autopsy on this same Exhibit 19.
9 You list the time of the exam at 1545 hours, 3:45 in the
10 afternoon; is that right?

11 A. Yes, sir.

12 Q. Do you have some sense of when the autopsy was
13 concluded?

14 A. I would have to go back and look on the database
15 at the office. We could probably reconstruct it, because
16 there would be a time when the evidence was released, and
17 that goes at another time on it. But my recollection is that
18 we were probably there a good couple of hours.

19 Q. And this was a somewhat unusual case in that there
20 was considerable work, that you've told us about here today,
21 in attempting to reposition the -- at least the larger skull
22 fragments into their proper orientation. That took
23 additional time from other kinds of postmortems that you do;
24 correct?

25 A. That plus just the multiple fractures, too. That

1 goes slower.

2 Q. If on this first page, the cover page of the
3 report, you list a number of people who were present. One of
4 them, of course, was Karen Gere, who worked in the office as
5 a medical investigator; is that right?

6 A. Yes, sir.

7 Q. And then you list a number of people from the
8 Yavapai County Sheriff's Office -- Luis Huante, Doug Brown,
9 Ross Diskin, Steve Surak, and Alex Jaramillo, and Kenneth
10 Brewer. Were all of them present for the entire autopsy, to
11 your recollection?

12 A. I really can't tell you how many were there for
13 all of the autopsy. Most of them were there certainly, and I
14 believe Brewer was the one who actually was doing the
15 photographs and so would have been there from beginning to
16 end.

17 Q. Did one of these sheriff's department individuals
18 identify himself as the case agent to you?

19 A. I don't recall specifically. Typically how I
20 learn who the case agent is on the case is off of the yellow
21 tag -- there's a person who fills it out. And they may or
22 may not be the case agent, but they are my point of contact.
23 And I don't happen to have a copy of the yellow tag here.

24 Q. That comes with the body when it arrives?

25 A. It does.

1 Q. Now, you said last week that were you shown some
2 scene photographs; is that right?

3 || A. Yes, sir.

4 Q. Tell me what you remember of, first, who showed
5 you the photographs, and then what photographs you were in
6 fact shown that afternoon.

7 A. They were digital photographs, and I viewed the
8 digital media. And I don't remember exactly what format that
9 digital media was. I just know that we took the digital
10 media and put it on the computer, and I looked at them on the
11 computer. And they were purported to be -- whoever had
12 custody of them was the one who presented them to me. And I
13 did not keep copies of those. I just looked at them on the
14 computer screen and gave it back to them.

15 Q. Okay. So someone had some digital photos --
16 someone from the sheriff's showed you some digital photos,
17 and you were somehow able to display them on your commuter
18 during the autopsy; is that right?

19 A. Actually -- yeah, during the time of the autopsy.
20 I actually do it sort of sequentially, so I don't get things
21 dirty. It was technically while I was looking at the body.
22 It was while -- during the context -- in the context of
23 preparing to do the autopsy, doing the autopsy, and
24 concluding the autopsy.

25 And I think that actually these scene

1 photos were actually at the end of the time.

2 Q. What scene photos do you remember looking at?

3 A. The room, per se, where the body was found with
4 the way things were distributed around in the room. The desk
5 area where the body was next to it. A ladder in the room.
6 And some -- just a general appearance of, I think, mostly
7 just the room.

8 Q. In any of those photos was the body present?

9 A. I believe it was for some of those, yes.

10 Q. Did you see photographs that depicted injuries to
11 the body?

12 A. That I don't recall. And I don't usually pay much
13 attention to those, because I am going to see the injuries
14 firsthand, so I don't pay too much attention to scene
15 injuries.

16 Q. Did any of the sheriff's personnel listed in your
17 report talk to you about any part of their investigation?

18 A. I am sure there was some verbal exchange. There
19 was even a narrative on the back of the yellow tag saying
20 sort of the initiating circumstances of the report that led
21 to the discovery of the body -- the death. And I am sure
22 there was some discussion of ongoing investigation, but this
23 is fairly early on, and so I don't know the extent of the
24 investigation. That's their bailiwick, not mine.

25 Q. Did you receive information from anyone in the

1 sheriff's office that they suspected that this was a homicide
2 as opposed to some sort of accidental death?

3 A. I would be surprised if they didn't say that,
4 because there is almost no way you could get this kind of
5 injuries in an accidental setting.

6 Q. I am asking if you remember the sheriff's office
7 offering opinions about any aspect of their investigation, up
8 to the point of the autopsy.

9 A. I don't think so.

10 Q. You said you saw a photograph of a ladder. Were
11 you told what the significance of that ladder was in the
12 opinion of the investigators?

13 A. No.

14 Q. Were you told that the police at that point
15 suspected that this scene had been staged in some manner to
16 make it look like perhaps an accident?

17 A. I will respond to two parts of your question
18 there. There was some discussion, that I became aware of,
19 that there was an interpretation placed upon the scene that
20 it was staged. Whether or not it was an accident, I don't
21 know that.

22 Q. And what information were you given by the police
23 that made them think that the scene was staged for some
24 reason? What did they tell you?

25 A. I had to draw that pretty much on my own

1 interpretation. But things were in wrong locations. For
2 example, the ladder wasn't in any place where it was useful,
3 for example.

4 Q. Did they talk about blood spatter?

5 A. Not at that time, no.

6 Q. Did you see any photographs that showed a desk in
7 the room where the body was located?

8 A. Yes, sir.

9 Q. Did you see large amounts of blood on the top
10 surfaces of the desk?

11 A. Stains which could be blood, yes.

12 Q. In any of the photographs that you saw, did you
13 see other objects around the body on the ground?

14 A. It is kind of a cluttered area, yes. It wasn't
15 just a body all out by itself.

16 Q. Did the police at any point during the autopsy,
17 from beginning to end, discuss with you my client,
18 Mr. Democker, either by name or identifying him as a suspect
19 or the former husband or anything of the sort?

20 A. A characterization of a former husband as an
21 individual as an investigative lead, I think, but nobody was
22 characterized as a suspect during the time of the autopsy.

23 Q. Let's not use the word "suspect," perhaps.

24 Tell me what you remember of any
25 discussion between you and the police or between the police

1 officers in your presence about Mr. Democker.

2 A. Actually, I am not even sure that the name per se
3 during that time was even mentioned. But generically, as an
4 ex-husband was mentioned as a person that was either being
5 interviewed or sought to be interviewed. I don't even know
6 the specifics of that at this point.

7 Q. Did the police tell you that they had already
8 executed a number of search warrants that day prior to the
9 beginning of your autopsy?

10 A. I was aware that some search warrants had been
11 issued, yes, sir.

12 Q. Do you know what was searched -- the locations of
13 the searches?

14 A. No. I was aware, and I don't know the exact date
15 which I was aware, but certainly before I had finalized my
16 report I was aware that among the places that had been
17 searched had been his residence.

18 Q. At any point during your interaction with the
19 people from the sheriff's office did they ask you questions
20 about your opinions -- what could have caused these injuries?
21 Are we talking about one or more assailants? Is there one
22 weapon?

23 Who instituted those discussions?

24 MR. BUTNER: Objection to the form.

25 THE COURT: Sustained.

1 MR. SEARS: Let me rephrase.

2 Q. Were there such discussions? Did the police ask
3 you such questions?

4 A. In a generic sort of way. Every case that has
5 trauma, we try to exchange that kind of information. And
6 specifically whether they asked me or whether I volunteered
7 or whether they asked follow-up questions to clarify
8 information that I convey to them, that is just routine. So
9 I am sure that that routine would have happened here.

10 But specifically, I don't recall any
11 questions about number of assailants, and I don't recall
12 specifically any questions about instrumentality, other than
13 my own suggestion early on.

14 Q. Would it be fair to say, Dr. Keen, that based on
15 your testimony here today and last week and in your report in
16 this case, that you were looking for particular objects that
17 caused all of this blunt-force injury to Ms. Kennedy that
18 could be associated with some narrower class of objects,
19 other than something of a similar shape and size?

20 A. I think that is fair, yes.

21 Q. Were you particularly trying to associate one kind
22 of instrument -- for example, a golf club -- with all of the
23 injuries that you saw on Ms. Kennedy; the patterned
24 contusions on her forearm, the bruising, and the lacerations
25 and associated skull fractures on her cranium?

1 A. I think I would hedge on "all." The injuries to
2 the right arm seemed to be the same object. And at least two
3 of the fracture patterns of the skull were, in my opinion,
4 consistent with a kind of club head from a golf club. Those
5 I would characterize as being likely to be the same object.

6 There are some other fractures which
7 don't have such characteristic marks, which I would not
8 necessarily rule in or out. But to the extent that I could
9 find -- these were unusual curvature patterns in the
10 fractures of the skull, and I was early very suspicious that
11 I had some object that had a very similar peculiar shape to
12 it.

13 Q. Let's try to break these down by injuries to
14 various parts of the body. Let's start first, if we could,
15 about the injuries to the right forearm, these two patterned
16 injuries. And you said that those were consistent with a rod
17 or a rod-like object; correct?

18 A. Yes. We describe that kind of blunt-force injury
19 as a "rod injury."

20 Q. And would you agree with me that there are
21 countless rod-like objects that -- independent of the other
22 injuries. We are just talking about those two patterned
23 contusions roughly parallel to each other on her right
24 forearm. There is a wide, wide range of objects that could
25 cause similar injuries.

1 A. Yes, sir.

2 Q. For example, a retractable police baton.
3 Something like that.

4 A. Probably not, because a retractable -- you get a
5 change in diameter, and you actually see the junctions for
6 the various telescoping areas of it.

7 Q. Depending on the size at the time and the distance
8 between the junctions, though. Because you are talking about
9 lacerations that are a number of inches that could be
10 measured on her right forearm; correct?

11 MR. BUTNER: Objection. Argumentative.

12 THE COURT: Sustained.

13 BY MR. SEARS:

14 Q. The injuries to the right forearm can be measured;
15 can't they?

16 A. They can.

17 Q. And the question that you had or the issue that
18 you had with this retractable police baton had to do with the
19 distance between the sections; correct?

20 A. Well, my response to you is that if I could
21 distinguish a police baton from something else, it would be
22 dependent upon the dimensions of the baton and of the
23 injuries there.

24 And just to keep the record completely
25 clear, we are talking contusions as opposed to lacerations.

1 Q. Right. Now, the bruise that you saw on the upper
2 right arm that you associated with being roughly the same
3 size and shape as the head of a golf club, could also be
4 caused independently by any number of other objects; correct?

5 A. Potentially, yes, sir.

6 Q. And it is not necessarily true, is it, that the
7 rod-like pattern injuries on the forearm are necessarily
8 associated directly with this contusion on the upper arm?
9 They could have been caused by two different events; correct?

10 A. It is possible, however I think that it's
11 unlikely, given that it is in the same axis.

12 Q. You weren't at the scene?

13 A. I was not at the scene.

14 Q. You didn't see what other objects might have been
15 in the way of the body as it was moving forward or falling --
16 when she might have fallen on something that could have
17 caused that bruise to her upper right arm?

18 A. That's true.

19 Q. Now, moving up to the facial injuries. If I
20 understood what you said last week, I was of the opinion --
21 and I have a copy of the transcript of your testimony from
22 last week -- that one possible scenario is that the injuries
23 to her face -- the laceration of her left eye, but also some
24 of the fractures and the injuries to her mouth and lips --
25 could have been caused by forcefully coming into contact with

1 an object like the desk?

2 A. Yes. Specifically, the laceration of the left
3 forehead is consistent with falling against a corner of a
4 desk, but you could also strike a different surface of the
5 desk, and you could result in fractures of the nose and
6 bruising of the lip.

7 Q. You are not prepared to say, are you, Doctor, that
8 the injuries to her face -- and by that I mean all the
9 injuries from the scalp down to the chin -- were caused by
10 the same object that caused the lacerations on her arm?

11 A. Let's make a fine refinement to this. The two
12 blackened eyes.

13 Q. Yes.

14 A. The two blackened eyes are a result, in my
15 opinion, not of blows to the orbit or to the front of the
16 eyes, but they're a result of the fractures that are
17 occurring on the inside of the skull. And those, therefore,
18 are the result of the impacts that are happening on top of
19 the head and not from something to the face. And with that
20 exception to this, all the other facial injuries are not
21 necessarily part of the blows to the back of the head.

22 Q. And we will talk about the transferred fractures
23 from a downward blow that come down -- translated down into
24 the skull to the orbit and those areas there, in just a
25 second, but I want to finish the facial injuries.

1 Mr. Butner was asking you questions about
2 blows to the face. My question to you is: Are you prepared
3 to say that someone or something struck her face, or did her
4 face strike something else?

5 A. I don't think I can make a distinction between
6 those two mechanisms. Either could result in the injuries
7 that I observed.

8 Q. Are you absolutely certain -- to a reasonable
9 degree of some certainty, though -- that the facial
10 injuries -- apart from the two black eyes -- but the
11 laceration over the eye and the other injuries were caused
12 first, before any of the blows to the skull?

13 A. No.

14 Q. They could have happened secondarily?

15 A. They could have happened secondary.

16 Q. For example, a blow to the back of the head
17 causing her to fall forward?

18 A. Correct.

19 Q. Let's talk about the blows to the skull, right and
20 left side.

21 Is it true that each of those lacerations
22 that were visible in the scalp, either before or after you
23 partially shaved the scalp, were associated with a depressed
24 skull fracture underneath those scalp lacerations?

25 A. Two or more. Yes, sir.

1 Q. And how many of those were there? I know it's
2 difficult on the left side to give an opinion, but how many
3 do you think there were?

4 A. We have the one that is up above and in front of
5 the right ear, on the right side of the head, in the upper
6 temporal, into the front area. That is one, which has a
7 curved area, and when you depressed the bone, resulted in the
8 uplifting of the bone in the front edge of it.

9 I have one behind that which is almost in
10 line with the back of the right ear on the parietal area, and
11 those are the two that you can say discretely are a part of
12 the right side of the head.

13 Q. Are you here today, Dr. Keen, to say a golf club
14 and, in particular, a golf club of the precise kind brought
15 to you on July 14th, was the murder weapon in this case?

16 A. No, sir.

17 Q. Can you say for sure that that golf club was used
18 in this attack, or would you be more comfortable saying that
19 an object with a similar-shaped surface, with a curve and a
20 linear component to it, was the cause of this blunt-force
21 trauma to the head, to the scalp?

22 A. Does the object also get to have a handle?
23 Because rarely does an individual change weapons during the
24 course of an assault. And if I have one to the arm, which I
25 think is consistent with a golf club, I think these are

1 probably consistent -- and I'm talking about consistency with
2 a golf club, but not identity to a golf club.

3 Q. There is nothing in your autopsy report that I
4 read, Dr. Keen, that rules out the possibility of more than
5 one assailant; isn't that true?

6 A. True.

7 Q. And if there were more than one assailant, each
8 assailant could have a separate object. One could have a
9 rod-like object, and one could have an object that would
10 produce this curved and linear component, depressed skull
11 fractures, and lacerations. Two people, two different
12 objects?

13 A. Not ruled out by the autopsy.

14 Q. Or any subsequent investigation that you have
15 done?

16 A. Correct.

17 Q. Now, talking about -- if we go back to your
18 premise that having the shaft attached to the head might
19 account, for example, for the patterned contusions and this
20 bruise on the arm here.

21 You are saying that the reason that you
22 associate that with a golf club and injuries to the skull is
23 in part because your belief is that assailants rarely change
24 weapons. Is that what you are saying?

25 A. That is part of it. Just the thought process.

1 It's not science, it's part of the thought process.

2 Q. You engaged in interesting back-and-forth with
3 Mr. Butner last week about ruling out objects. I think we
4 got as far as ruling out a baseball bat.

5 A. Yes, we can rule out a baseball bat.

6 Q. Would you agree with me that there are any number
7 of potential objects, other than the head of a golf club,
8 that -- again, not talking about these injuries to the arm,
9 but just the injuries that you saw on the skull when you got
10 down to the bony surfaces -- there are any number of objects
11 that you could imagine that could cause those kinds of
12 injuries?

13 A. Let's just say that there are a number. There's
14 probably not any number, but there is a number of objects
15 that could do that, yes, sir.

16 Q. That's correct. And that would be a relatively
17 large number?

18 A. Potentially.

19 Q. Okay. And you are here today, I suppose, to say
20 that that's your opinion -- that an object shaped like that
21 that would have these two components, a curved component and
22 a linear component, is likely the object that caused the
23 blunt-force injury to the skull?

24 A. You could add one more feature, at least, to that
25 and that is that it has to be of enough density to be able to

1 inflict that kind of injury -- shape, size, and density, and
2 an ability to give it the kind of momentum to do this is all
3 that's really required.

4 Q. And I assume that you haven't been asked to offer
5 any opinions about the biomechanics of this attack, to try
6 and reconstruct the positions of the assailant and the
7 victim, or how this instrument was used, or whether there
8 were even multiple assailants using multiple weapons. You
9 haven't been asked to do any of that; have you?

10 A. I had a conversation with Dr. Fulginiti in the
11 presence of prosecution and in the presence of law
12 enforcement in which that discussion was made.

13 Q. You haven't been asked about it here today?

14 A. Have not.

15 Q. And you are not a biomechanical engineer by
16 training; are you?

17 A. No. I defer that to my brother-in-law.

18 Q. He didn't do any work on this case; did he?

19 A. I don't think so.

20 Q. Now, we can talk about the sequencing of blows.

21 I read clearly in your report, Dr. Keen,
22 Exhibit 19, that you had listed the injuries numerically, and
23 you said that you had no intent to indicate the order of
24 infliction. And your testimony today remains the same, that
25 you are unable, for a number of reasons, to definitely

1 sequence the blows one at a time.

2 A. That is correct.

3 Q. You have opinions about the blows to the right
4 side of the head, which you expressed last week. But other
5 than that, the cause of the circumstances of this particular
6 case, you are not able to give us a more definitive sequence
7 of events; is that right?

8 A. That is correct.

9 Q. Can I also assume, then, Doctor, that you can't
10 tell us the length of time that would elapse between each of
11 the blows that caused the injuries that you observed?

12 A. I think that is actually accurate.

13 Q. A person or persons inflicting these injuries
14 could strike rapidly, if they were strong enough to inflict
15 the kind of force necessary to cause the stronger -- the
16 temporal strength of the skull?

17 A. Rapid but not that rapid. Because you have to be
18 able to draw back and inflict again. It's more rapid than
19 just tapping.

20 Q. A matter of seconds, though?

21 A. Could be very rapid.

22 Q. A matter of seconds.

23 So if, hypothetically, the first blow
24 that is struck in this case is a blow -- one of the blows to
25 the skull, for example, this one that you talked about in

1 your report as being the most severe. This blow -- were you
2 saying right occipital?

3 A. It's right temporal into frontal.

4 Q. Directly above the right ear?

5 A. And in front, yes.

6 Q. Let's assume that was the first blow, and I think,
7 if I understand your testimony today, that that likely would
8 have rendered her unconscious and could have led to her death
9 in a relatively short period of time; is that right?

10 A. Yes, sir.

11 Q. Okay. If the assailant or assailants continued to
12 strike her at that point, the entire sequence front to back,
13 including falling into the desk and lacerating the eye and
14 doing the other facial injuries around the mouth and perhaps
15 even a fractured nose -- all of that could have been over
16 very quickly; correct?

17 A. Yes, sir.

18 Q. And during that same period of time if she was
19 rendered unconscious, presumably she would not have stopped
20 breathing immediately; correct?

21 A. That's correct.

22 Q. Would she have been able to make some sort of an
23 involuntary sound -- a moan?

24 A. Probably not a typical moan, but there are the
25 breathing sounds that are variations of rattling and snoring

1 and other kinds of sounds where you have some narrowing of an
2 airway while air is still trying to exchange through the
3 lungs that could still make involuntary sounds, yes.

4 Q. What about movements? Are there voluntary or
5 involuntary movements -- body movements after that first
6 blow? Assuming, again, that we are talking about this severe
7 blow above the right ear.

8 A. No voluntary movements, because we're unconscious
9 and we have cortical damage.

10 Involuntary movements to the extent that
11 there's a disproportionate mass and muscles in some
12 contraction and where the center of gravity is. They
13 wouldn't necessarily just come to one position. They might
14 come to a position and move slightly. But those are all
15 involuntary.

16 Q. So a person -- do you have some sense as to
17 whether it's likely this attack began while Miss Kennedy was
18 standing and continued after she went to the ground?

19 A. Not having seen the scene, I don't think I am
20 prepared to render a definitive opinion in that regard.

21 Q. If one or more assailants were attacking her and
22 inflicting these injuries as she went down, quickly from the
23 first blow, presumably she would not only lose consciousness,
24 she would fall to the ground, hitting whatever she might hit
25 on the way down; correct?

1 A. Yes, sir.

2 Q. And if the assailants were looking at her, it
3 wouldn't be apparent to them that she was dead or dying at
4 that point, necessarily, would it?

5 A. It would not necessarily be apparent to them that
6 she was dead. No rational person would think that they were
7 not dying from this severity of blows.

8 Q. And again, that is assuming hypothetically that
9 the first blow was the worse blow; correct?

10 A. Well, even any of them. Because we have areas
11 here where we're having depressions of skull fractures, as
12 well as deep, large lacerations of the scalp, which after the
13 first injury, will continue to bleed. The first one may not
14 have a lot of blood loss, because that's the first breach in
15 the scalp. But because of all the blood output in the head
16 and neck area, it's going to be pretty bloody afterward.

17 Q. May I assume that in the many years that you have
18 done this work here and elsewhere, you have seen cases in
19 which people have been shot or stabbed or bludgeoned more
20 than one time?

21 A. Yes, sir.

22 Q. And it is not necessarily an uncommon circumstance
23 that somebody who is being beaten to death with an object or
24 objects is struck more than once; correct?

25 A. Not uncommon, no.

1 Q. Let's talk about these wounds to the arm.

2 In your report on Page 5, Exhibit 19, you
3 say: "There are two patterned contusions whose location or
4 appearance are consistent with defensive injuries."

5 A. Yes, sir.

6 Q. Now, from looking at the photographs, it appears
7 to me that the injuries are to the -- basically to the top
8 surface of the right forearm; correct?

9 A. Yes, sir.

10 Q. So that if Ms. Kennedy was throwing her arm up,
11 she would have to rotate her arm, essentially, so that her
12 palm was facing her face?

13 A. Certainly the forearm, yes. Pretty much the palm
14 more so -- I could still get the same thing with my -- my
15 wrist I can turn more, but the hand attitude is such that the
16 exposed surface is this.

17 Q. I am sure you have seen injuries that you would
18 characterize as defensive to the non-hair bearing surfaces
19 where people throw their arms up, as I'm doing now with the
20 non-hair bearing surfaces facing forward; correct?

21 A. Yes, sir.

22 Q. Now, there is nothing about the appearance of
23 these patterned contusions on the arm that would allow you
24 to sequence them with respect to the other injuries; isn't
25 that true?

1 A. Actually, I think I might be able to sequence them
2 a little bit relative to this, and the reason being that
3 absent flexion of the forearm at the elbow later -- if you
4 flex it because the body is in a position where the
5 surroundings force it to be flexed, then you don't get access
6 to it. You can't expose it enough to strike it.

7 The very fact that they line up and
8 continue to go across the joint at the elbow suggests
9 purposeful flexion at the time. So that puts it pretty
10 early.

11 Q. It suggests that, but it doesn't require that;
12 isn't that fair to say? That arm could simply have been in
13 that position.

14 A. That's fair.

15 Q. The body could have been on the ground?

16 A. But you have to be able to have it exposed in the
17 position to be able get to that, which -- the photos didn't
18 seem to support that.

19 Q. Well, that is where the body was found. There was
20 some suggestion that perhaps the body had been moved;
21 correct?

22 A. Well, if we're going to do that, then your line of
23 questioning is correct.

24 Q. And if, in fact, the body had been moved, based on
25 the drag marks and the blood or abrasions on the body, then

1 you would have no way of knowing in the autopsy room whether
2 or not those injuries -- those strike injuries to her right
3 forearm were inflicted first or last?

4 A. Not definitively, no.

5 Q. And clearly if they were inflicted after she had
6 lost consciousness, they would be in no way defensive wounds;
7 correct?

8 A. They wouldn't. You would have to have a very --
9 as I suggested earlier, a very special set of circumstances
10 to get them positioned properly in an unconscious person,
11 because it is not a usual unconscious-person position.

12 Q. You don't know the height of the assailant or the
13 positions of the assailant in order to do the biomechanical
14 engineering, necessarily, to show how this strike could
15 happen if she were standing facing her assailant; correct?

16 A. I do not.

17 Q. And you weren't asked to do that?

18 A. No, sir.

19 Q. And is there anything else that -- about these
20 injuries to the right forearm, other than their location,
21 from a forensic point of view, makes them defensive wounds or
22 consistent with defensive wounds?

23 A. Consistent with it, but does not require them to
24 be.

25 Q. In your report -- and I am not certain whether

1 this is at Bates 551, and I am not certain whether this was
2 part of Exhibit 19.

3 MR. SEARS: If I could approach the witness,
4 Your Honor?

5 THE COURT: You may.

6 BY MR. SEARS:

7 Q. It says "Cover Page." Is that part of this?

8 A. It is. It's the first page of Exhibit 19.

9 Q. Right. You have a "Narrative Summary of Reported
10 Circumstances Surrounding Death."

11 Is that the information that came off the
12 yellow tag?

13 A. Either off the yellow tag or verbally from law
14 enforcement at the time of autopsy. Either case, the source
15 of that was law enforcement.

16 Q. It says: "This woman was reportedly talking on
17 the telephone to her mother when she exclaimed, 'Oh, no,'
18 followed by the sound of the phone dropping then
19 disconnected."

20 Can you tell me to the best of your
21 recollection where you got all of that information.

22 A. Police. Law enforcement.

23 Q. In writing or in some discussion with them or
24 both?

25 A. Both, I think.

1 Q. "Law enforcement checking the scene discovered the
2 body of this woman lying on the floor, the victim of obvious
3 trauma. There was some disarray of the office, however the
4 scene appeared to be," quote, "staged" close quote.

5 Again, can you tell me the best of your
6 recollection here today what you were told that caused you to
7 put in your official report that the scene appeared to be
8 staged.

9 A. That was conveyed to me -- again, I don't know
10 whether verbally or in writing. We are missing one little
11 item from the file that would help me answer that
12 definitively, and that's the yellow tag, which was prepared
13 by Detective Brown, who was listed as the officer preparing
14 the tag. When we see that, we can tell whether I got it in
15 writing. And if it's not in writing, then it's verbal.

16 Q. Would it be fair to say that none of these
17 statements or conclusions are yours?

18 A. That's correct. Those are just the narrative
19 circumstances that were reported to me.

20 Q. On the other hand, if you had been at the scene,
21 perhaps you would have been able to conclude your own
22 observations; correct?

23 A. Yes, sir.

24 Q. May I assume that your testimony last week and
25 today that this was a vicious attack -- that that's your own

1 words for this. That's not a word that you have some belief
2 it has legal connotations, just your word; correct?

3 A. Just my choice of word, yes, sir.

4 Q. People who are beaten to death, particularly about
5 the head and face, are always the subject of a vicious
6 attack; aren't they?

7 A. Some more so than others.

8 Q. And -- but there is no such thing as a gentle or a
9 reasonable bludgeoning. It's always going to be vicious at
10 some point; correct?

11 A. I would agree.

12 MR. SEARS: No other questions.

13 THE COURT: Mr. Butner.

14 REDIRECT EXAMINATION

15 BY MR. BUTNER:

16 Q. Dr. Keen, in your experience, is this an
17 exceptionally vicious attack?

18 A. I would say yes.

19 Q. And what made it so?

20 A. The multiplicity of these injuries to the head,
21 when clearly, even to a lay observer, this person will become
22 helpless after one.

23 Q. And I understood your earlier testimony it was
24 your belief that, given your long experience with these kinds
25 of things, with these kinds of attacks and autopsies on the

1 victims of these kinds of attacks, that those injuries to the
2 forearm in that flexed position, those were basically
3 defensive-type injuries?

4 A. I classified them as consistent with defensive
5 injuries, yes, sir.

6 Q. Have you ever seen those kind of injuries in a
7 situation where they weren't defensive?

8 A. I don't think across a contracted joint, no, I
9 don't think so.

10 Q. And if I understood your testimony, it was your
11 opinion that as a result of those injuries being defensive in
12 nature, then the victim was conscious at the time they
13 received those injuries?

14 A. Yes, sir.

15 Q. And thereafter, of course, was suffering as a
16 result of receiving those injuries?

17 A. Yes, sir.

18 Q. Would you characterize this attack as a cruel type
19 of attack?

20 MR. SEARS: Objection. Calls for legal
21 conclusion.

22 THE COURT: Sustained.

23 BY MR. BUTNER:

24 Q. The beating that was administered to this victim,
25 did it appear to you from your examination that there was

1 sort of a progression concerning this beating?

2 A. If we can clarify your question of "progression."
3 Are we talking about changing of intensity, or are we talking
4 about changing positions?

5 Q. Both.

6 A. I can't say about intensity, because I have
7 certainly depressed fractures on both sides. But because
8 there is a circular kind of distribution of injuries to the
9 head, it does seem that it progressed relative to -- the
10 position between the assailant and the victim was changing.
11 Therefore, there is a progression, if you will.

12 Q. Could you tell whether the attacker was working
13 their way around the victim or vice versa?

14 A. Can't tell.

15 Q. But the blows worked their way around the victim
16 in some fashion?

17 A. Actually, I can tell -- I have to go back to a
18 previous statement.

19 The victim cannot work their way around
20 the assailant after they received the first one. It is
21 always -- once they are unconscious and they have no motor
22 function, all of the necessary progression after that or
23 change of position thereafter is the assailant relative to
24 the now non-voluntary victim.

25 Q. So we have blows --

1 A. The victim may change position, but if they change
2 position, it's involuntary because they are unconscious. And
3 from where you begin from the first blow and the body changes
4 position, any subsequent blow is going to be a slightly
5 different position. But there is a progression around the
6 head from the right around the back to the left.

7 Q. So we have blows basically administered to the
8 victim while they're conscious from a frontal, going around
9 the right side of the victim?

10 A. Well, it starts at the right. And then I don't
11 know which of the others, because if there is a time lapse --
12 if my reconstruction is correct, and I believe it is, and my
13 opinion that these injuries to the forearm were not secondary
14 but were early. I don't know the time sequence after that,
15 so I don't know whether the next assault begins from the
16 right or the left. It could, but it's from one side or the
17 other with a progression to the rest.

18 Q. And if I understood your testimony, several of
19 those blows sustained to the head of the victim were done
20 while the victim was unconscious.

21 A. Most of them.

22 Q. Most of them.

23 A. Yes, sir.

24 Q. Because they were of such a severe nature?

25 A. Yes, sir.

1 Q. And when you are talking about severity, you are
2 talking about the fractures of bone that depressed into the
3 brain and also were uplifting; is that correct?

4 A. Yes, sir. And also we made reference to it but
5 didn't explore further, the transmission of these forces even
6 to the floor or the base of the skull.

7 Q. In fact, did you find many little pieces of bone
8 located in the base of the skull?

9 A. Yes, sir.

10 Q. As a result of the shattering type of injuries
11 from these blows?

12 A. Yes, sir.

13 Q. And so -- you know, Mr. Sears was asking you about
14 the period of time that elapsed while these blows were taking
15 place.

16 Is it your opinion that there would be at
17 least a certain amount of time because of the progression of
18 the blows from one side to the other and also to the back of
19 the skull?

20 A. Yes, but it still doesn't have to be very long.

21 Q. And if I understood your testimony, the blows to
22 the face, those were either secondary to the skull being
23 struck from the rear, or they were as a result of something
24 else striking the face; is that correct?

25 A. Yes, sir.

1 Q. And you gave an example of either the desk
2 striking the face?

3 A. In the case of the left forehead lesion because of
4 its shape.

5 Q. Right. Or could a person's fist be the instrument
6 of the blows to the nose area?

7 A. A fist or similar object could be the instrument
8 for the nose and mouth.

9 Q. And if I understood your testimony correctly, even
10 though this entire sequence could be over relatively quickly,
11 in your opinion there was significant suffering by the victim
12 as a result of what you observed to be the defensive nature
13 of the blows to the arm?

14 MR. SEARS: Objection. Leading.

15 THE COURT: Sustained.

16 BY MR. BUTNER:

17 Q. As a result of the blows that you observed, was it
18 your opinion that there was suffering by the victim?

19 A. Yes, sir.

20 Q. And just to clarify, are you the person that
21 suggested to the police officers that the instrumentality of
22 these blows -- the instrument used to inflict these blows was
23 a golf club?

24 A. Yes, sir.

25 Q. They then went out and brought a club to you to

1 compare; is that correct?

2 A. Subsequently, yes.

3 Q. And that occurred days later; is that right?

4 A. 11 days later.

5 MR. BUTNER: No further questions.

6 THE COURT: Any objection to releasing
7 Dr. Keen from his subpoena at this point, or do you want him
8 subject to recall?

9 MR. SEARS: I think we are done.

10 MR. BUTNER: No objection, Judge.

11 THE COURT: You are released from your
12 subpoena. We will take all of the exhibits. Thank you.

13 Rather than start up with another witness
14 at this point, it's just a couple of minutes to 12:00, let's
15 resume this afternoon.

16 How much time are you estimating for this
17 afternoon's examination, cross-examination, if you know?

18 MR. BUTNER: Judge, I was thinking we are
19 going to be here all afternoon. Is that mistaken on my part?

20 THE COURT: Well, that is to say, do you think
21 I ought to start up again at 1:15 to make sure we have enough
22 time to finish what we can today?

23 MR. BUTNER: I would hope we would start at
24 1:30, quite frankly.

25 THE COURT: Mr. Sears?

1 MR. SEARS: Makes no difference to us whether
2 you start at 1:15 or 1:30.

3 I had a couple of questions for the Court
4 about time. We had talked, I thought, at the end of the day
5 last week about the possibility of going into tomorrow if we
6 don't finish today.

7 THE COURT: Well, it is a possibility. It is
8 okay on my calendar. I am not sure how it is on your
9 calendar. The other gentleman who was suggested as a
10 witness --

11 MR. BUTNER: Mr. Echols.

12 THE COURT: -- Mr. Echols is not here until
13 Friday, and so we definitely are planning on some portion of
14 Friday.

15 I suppose I would rather just have
16 Mr. Echols as distinguished from additional witnesses from
17 the State on Friday. So I would hope that we can get through
18 the rest of the State's witnesses through today or tomorrow.

19 MR. SEARS: We made ourselves available
20 through the rest of this week. I have that one 30-minute
21 block tomorrow afternoon in juvenile court that is still on
22 the calendar. It's just downstairs.

23 THE COURT: I think I have some other matters
24 that are scheduled in the morning. Let me make sure with you
25 what time I do have.

1 Mr. King reminds me I have a 9:00, an
2 8:30, a 10:00 and then 11:00 tomorrow, but that the
3 afternoon, apparently, is available. I am not certain how
4 long the eleven o'clock is going to last, but I think it is a
5 relatively short hearing. But that doesn't leave much in the
6 way of the rest of the morning. So we're probably looking at
7 tomorrow afternoon, if we are not done with witnesses today.

8 MR. SEARS: We'll be ready to go.

9 THE COURT: All right. We'll resume at 1:30,
10 then, today.

11 MR. SEARS: If I could get a sense -- so I
12 have the right materials -- of who Mr. Butner is going to
13 call this afternoon.

14 MR. BUTNER: I'm going to call Detective Page
15 and Detective Brown and hopefully Detective McDormett, police
16 officers. And if we go expeditiously, I would hope that I
17 would get them done this afternoon.

18 THE COURT: We will resume at 1:30, then, for
19 remainder of the hearing.

20 (Whereupon, a recess was taken at 11:54 a.m.

21 to resume at 1:30 p.m. of the same day.)
22
23
24
25

OCTOBER 28, 2009
1:28 P.M.

1
2
3 APPEARANCES:

4 FOR THE STATE, MR. JOE BUTNER.
5 FOR THE DEFENDANT, MR. JOHN SEARS AND
6 MR. LARRY HAMMOND

7 THE COURT: Record reflects the presence of
8 the defendant, his two counsel, the prosecutor.

9 Mr. Butner.

10 MR. BUTNER: Judge, I would like to call
11 Detective Steve Page to the stand.

12 THE CLERK: Do you solemnly swear upon penalty
13 of perjury the testimony you are about to give will be the
14 truth, the whole truth, and nothing but the truth, so help
15 you God?

16 THE WITNESS: I do.

17 THE COURT: Mr. Butner.

18 MR. BUTNER: Okay, Judge. Thank you.

19 STEVE PAGE,
20 called as a witness, having been duly sworn, testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. BUTNER:

24 Q. Please state your name for the record, sir.

25 A. Steve Page.

Q. What is your occupation?

1 A. I'm a detective.

2 Q. And for what agency are you a detective?

3 A. Yavapai County Sheriff's Office.

4 Q. How long have you been with the Yavapai County
5 Sheriff's Office?

6 A. About nine-and-a-half years.

7 Q. And how long have you been a detective?

8 A. About six-and-a-half years.

9 Q. And have you been tasked in connection with the
10 Virginia Carol Kennedy homicide investigation to perform
11 certain specific duties?

12 A. Yes.

13 Q. What are they?

14 A. To do forensic examination on the digital
15 evidence.

16 Q. Okay. And when you say "forensic examination on
17 digital evidence," are you basically talking about doing
18 forensic examination on computers?

19 A. Yes.

20 Q. And have you had any specialized training to
21 assist you in doing that?

22 A. Yes, I have.

23 Q. Would you describe your training for us, please.

24 A. I've attended two courses put on by the National
25 White Collar Crime Center; that would be the Basic Data

1 Recovery and Acquisition class, the Intermediate Data
2 Recovery and Analysis class.

3 I've taken courses in ILook, which is a
4 brand of software used for forensic examinations.

5 Q. Is that an acronym?

6 A. I don't know.

7 Q. What did you -- is that a number of letters? I
8 couldn't quite understand.

9 A. Yes.

10 Q. What are the letters?

11 A. I-L-o-o-k.

12 Q. ILook?

13 A. ILook.

14 Q. Go ahead. Please proceed.

15 A. I have also taken the EnCase Computer Forensics I
16 course, and I am currently taking the Computer Forensics II
17 course through EnCase.

18 Q. And are you also currently working down at the
19 D.P.S. ActIC center?

20 A. Yes.

21 Q. In their computer forensic laboratory?

22 A. Yes.

23 Q. And in this particular case, what computers did
24 you analyze?

25 A. The computers I've analyzed or I am currently

1 analyzing are Steven Democker's laptop computer; Carol
2 Kennedy's tower that was -- she was currently using -- there
3 was a tower that was obtained that was a crashed computer
4 from Carol's residence -- Steven Democker's work computer
5 from his office in Prescott; and there was an Apple laptop
6 that belonged to one of his daughters.

7 And there are also other items of digital
8 evidence -- thumb drives, flash memory devices, things of
9 that nature that I looked through.

10 Q. Okay. Would you tell us, basically, what your
11 focus has been up-to-date at this point in time -- which
12 computers you have focused on?

13 A. I have done most of the examination on the compact
14 disks or CDs that were collected, most of the thumb drives
15 and flash memory devices have been processed, and a number of
16 the other items, as well, in the digital realm.

17 The computer specifically I have worked
18 on is mostly Steven Democker's laptop.

19 Q. Okay. And in connection with Steven Democker's
20 laptop, what did you do?

21 A. I have done keyword searches through the forensic
22 image of it for various terms and examined the results of
23 those terms and examined e-mail history and Internet history
24 on the item.

25 Q. And what was the -- what was the method or

1 mechanism by which you were able to do this?

2 A. The lab created a forensic image, which is like a
3 copy of the hard drive. And all the examination is run on
4 that copy rather than against the original evidence.

5 And I use various software packages,
6 including EnCase and AccessData's FTK, several other forensic
7 software packages and other software that is used for
8 examining or viewing computer files.

9 Q. Okay. In regard to the keyword searches, would
10 you tell us what kind of keyword searches you did?

11 A. Words such as "kill," "death," variations of "die"
12 or "died," and -- the list is long, and I don't have it in
13 front of me.

14 Q. Okay. But those are some of the examples?

15 A. Yes.

16 Q. Okay. And did you bring with you today for --
17 which was marked -- which were marked as exhibits the
18 examples of the searches that you did?

19 A. Those would be examples of the data found, yes.

20 Q. Okay. Let me show you what has been marked as
21 Exhibit No. 69.

22 Do you recognize what that exhibit is?

23 A. Yes, I do.

24 Q. Tell us what it is.

25 A. It is an Excel spreadsheet that I created that

1 lists selected entries of his Internet history from
2 the -- from Steven Democker's laptop computer.

3 Q. Okay. And tell us how you created that Excel
4 spreadsheet.

5 THE COURT: The number again is 69?

6 MR. BUTNER: 69, Your Honor.

7 THE COURT: Thank you. Go ahead.

8 THE WITNESS: Using AccessData's Forensic Tool
9 Kit or FTK software, I loaded all of the images from his
10 computer into that and created a listing of -- back up. I
11 have to correct myself. I used that software for another
12 aspect of the investigation.

13 I obtained the history files from his
14 laptop system, using EnCase, and then exported those out and
15 brought them into a software package called "NetAnalysis."
16 And NetAnalysis allows me to sort and search for history
17 artifacts and information out of those files. And then that
18 information was moved over to an Excel spreadsheet to make it
19 more visibly functional.

20 BY MR. BUTNER:

21 Q. And there is a red highlighting area on that
22 particular exhibit; correct?

23 A. Yes.

24 Q. Okay. How did that red highlighting area get
25 there?

1 A. I highlighted selected entries that were of
2 interest to me.

3 Q. Okay. And for example on Exhibit 69, when you
4 were doing that examination of his history, what were you
5 looking for?

6 A. I was looking for Internet history that showed he
7 had been out on the Internet doing research on compressed
8 gases and, particularly, carbon monoxide, as well as other
9 chemicals, and research on their uses. He was doing research
10 on how to kill someone, how to hide a homicide as a suicide,
11 or how to mask it, how to -- and also information on how he
12 was trying to obtain those carbon monoxide.

13 Q. Okay. And Exhibit 69, does this contain some of
14 that information?

15 A. Yes, it does.

16 Q. And this is information that you gathered from
17 Mr. Democker's computer?

18 A. Yes.

19 Q. And is that the same -- would the same be true,
20 then, for Exhibits 70 through 77?

21 A. Yes.

22 Q. Those are all prepared in the same fashion by
23 using that EnCase program and then sorting and searching?

24 A. Yes.

25 Q. And when you say "sorting and searching," you were

1 specifically looking for things like carbon monoxide?

2 A. That, yes, and other chemicals and other things of
3 relevance to the investigation.

4 Q. And did you find a history of researching for
5 those things?

6 A. Yes, I did.

7 MR. BUTNER: I would move for the admission of
8 Exhibits No. 69 through, I think I said, 77.

9 MR. SEARS: Objection. Relevance. Absolutely
10 nothing to connect any part of this exhibit to what we are
11 here to decide, which is probable cause and any enumerated
12 aggravator.

13 THE COURT: What aggravator does this pertain
14 to?

15 MR. BUTNER: This pertains to the Aggravator
16 No. 13-703(F)(13). "The offense was committed in a cold,
17 calculated manner without pretense of moral or legal
18 justification."

19 Judge, and to further assist the Court, I
20 would ask the Court to take notice of this witness's previous
21 testimony at the Simpson hearing, as well as in the grand
22 jury.

23 I am trying to kind of move this along
24 more quickly. This is evidence of the research that the
25 defendant was engaged in.

1 THE COURT: I will overrule the relevancy
2 objection for purposes of the evidence being possibly useful
3 for 13-703(F)(13).

4 MR. BUTNER: Thank you.

5 Q. Did you find a history in this research that the
6 defendant was researching how to kill someone, how to make a
7 homicide look like a suicide, also efforts at obtaining
8 carbon monoxide for those kind of purposes?

9 A. Yes.

10 Q. Could you point out specific examples of what you
11 found in that regard in that history?

12 A. Yes, I can. The --

13 Q. Referring to the exhibit by number.

14 THE COURT: I don't think I said the required
15 words, that Exhibit 69 through 77 are admitted.

16 So the objection not only was overruled,
17 but 69 through 77 are admitted for purposes of this hearing.

18 MR. BUTNER: Thank you.

19 THE COURT: Sorry for the interruption.

20 MR. BUTNER: It's all right.

21 Q. Referring to the exhibits by number, for example,
22 let's just start with 69. What did you find of significance
23 in Exhibit 69's history?

24 A. On the date of April 1st, under the Column D,
25 labeled "last visited" -- this would be the last-visited site

1 or last-visited time that was recorded for that site. He
2 went to a Web site -- this would be Line No. 120, 121, that
3 is -- the title of that Web site is "what is my IP address."

4 And on Line 121, over under Column H, the very
5 last words on that entry are "can someone find me." It's my
6 understanding that Web site -- it allows someone to determine
7 if their computer IP address can be tracked by someone else
8 on the Internet, as to what they are doing or if their
9 computer is connected to the Internet at that time.

10 Q. Okay.

11 A. Shortly after that, there is a search done -- a
12 Google search for "federal employer identification number,"
13 and then the next entry in that goes to the "IRS.gov" Web
14 site.

15 Q. Okay. And how did that search for a federal
16 employer identification number turn out to be significant?

17 A. On information that I testified to in the Simpson
18 hearing, there was a document that he created -- as a matter
19 of fact, there is an item in that information I testified to
20 that -- where he obtained a federal EIN number from the IRS.

21 Q. A federal employer identification number?

22 A. Yes.

23 Q. And what did he do with that federal employer
24 identification number?

25 A. He entered it into another document that was

1 created, produced by a company called "Matheson Tri-Gas."
2 And that document was a statement on a buyer's part on why
3 they would be buying a restricted chemical from that company.

4 Q. What restricted chemical was he appearing to
5 prepare to buy?

6 A. Based on all the totality of the information I
7 obtained, it would be carbon monoxide.

8 Q. And in those history documents that you have
9 before you, is there evidence that he was researching the
10 purchase of carbon monoxide?

11 A. Yes, there is.

12 Q. Could you indicate what exhibit numbers that is
13 on?

14 A. The papers are not numbered. I'll do my best
15 to --

16 Q. They are numbered. They are numbered on the back.

17 THE COURT: Those numbers are very small.

18 MR. BUTNER: Right. Very small.

19 Q. See? Right down there. That is Exhibit 69.

20 A. Excellent. Okay.

21 On Exhibit No. 70, line 288 is a Google
22 search for "Praxair" plus "U.S." -- that would be the search
23 term. Praxair is a supplier of chemicals and compressed
24 gases.

25 There were numerous entries after that

1 that related to Praxair. Those dates were in the
2 neighborhood of April 6, generally in the morning around
3 8:50 a.m.

4 Q. April 6th of the year 2008?

5 A. Yes, that's correct.

6 Q. Okay.

7 A. There are entries in there to -- there is another
8 Google entry, line 293, where he did a search for "use of
9 carbon monoxide in semi-conductor fabrication."

10 And there are following entries, from
11 his Internet history, where he went to sites like
12 "sciencedirect.com" that relate to that search.

13 Exhibit 71, there are additional -- line
14 300, the first line at the top, at the far right under
15 Column H, it notes that he made a search for "use of carbon
16 monoxide in semi-conductor fabrications." Again, this is
17 April 6, 2008, about 8:57 a.m., and spent more time at the
18 Praxair Web site. Praxair is spelled P-r-a-x-a-i-r.

19 Q. And that's one of the purveyors of this particular
20 chemical?

21 A. Yes.

22 Q. Did he go to other sites and look for purveyors of
23 carbon monoxide?

24 A. Yes, he did.

25 Q. What were those sites?

1 A. He went to Matheson Tri-Gas.

2 Q. And is there evidence of that on the histories?

3 A. I would have to look through, but yes, there
4 should be.

5 Q. Why don't you do that, please.

6 A. I don't see the entry for Matheson in this
7 listing, but I do know that he was at --

8 Q. And how do you know he went to those other sites?

9 A. The Matheson information that he has in a prior
10 exhibit from the Simpson hearing, I submitted that
11 information in that exhibit.

12 Q. Right. And did you bring, also, copies of that
13 with you today for exhibits?

14 A. Yes, I did.

15 Q. And how did you obtain that information?

16 A. Through searches in his computer and in his --

17 Q. Did he go to various Web sites?

18 A. Without looking at that information, I can't say,
19 off the top of my head.

20 Q. You prepared an overall list of the various Web
21 sites that he visited; is that correct?

22 A. That, I would have to look at what you are
23 referring to.

24 Q. Let me show you what has been marked as
25 Exhibit 78. What is that?

1 A. That is a bookmarked report from EnCase, that I
2 submitted in the Simpson hearing, of selected entries that
3 I -- information that I found in his computer at that time.
4 It is not a complete list.

5 Q. I understand that is not a complete list.

6 Is that a list of Web sites that were
7 visited by the defendant through his computer?

8 A. This document contains a list of documents that
9 were found on his computer, as well as some Web searches that
10 were done on his computer.

11 Q. Okay. So is that how you would describe it?

12 A. As I said, yes.

13 Q. Okay. And you prepared that in connection with
14 the Simpson hearing; is that right?

15 A. I did, yes.

16 MR. BUTNER: I would move for the admission of
17 Exhibit No. 78, Your Honor.

18 MR. SEARS: Relevance.

19 THE COURT: Overruled.

20 BY MR. BUTNER:

21 Q. And that assisted you in proceeding through your
22 testimony today, in terms of the various documents that you
23 found on Mr. Democker's computer, as well as the Web sites
24 that he visited; right?

25 A. Yes.

1 THE COURT: 78 is admitted.

2 MR. BUTNER: Thank you.

3 Q. Let me show you what's been marked as Exhibit
4 No. 79.

5 Do you recognize that document?

6 A. Yes, I do.

7 Q. What is it?

8 A. It is a "Restricted Chemical Compliance Inquiry."
9 That is the title of the document. It is produced by
10 Matheson Tri-Gas, and it is for --

11 Q. Where did you get this document?

12 A. This was found on Steven Democker's laptop in a
13 folder on his "My Documents" folder, labeled "Book Research."

14 Q. Okay. And it's something that he got from what
15 company or what Web site?

16 A. This document was e-mailed to him from Matheson
17 Tri-Gas.

18 MR. BUTNER: I would move for the admission of
19 Exhibit No. 79.

20 MR. SEARS: Objection. Question on voir dire?

21 THE COURT: You may.

22 VOIR DIRE EXAMINATION

23 BY MR. SEARS:

24 Q. Detective Page, do you have any information
25 whatsoever that indicates that Mr. Democker actually ever

1 ordered anything from Matheson or Praxair or any of these
2 other companies?

3 A. Not at this point in time.

4 Q. In fact, you have information to the contrary;
5 don't you? There is indication that Matheson has been
6 contacted and said they have no record of ever receiving an
7 order from Mr. Democker or any business connected to him;
8 isn't that right?

9 A. Matheson has been contacted. To the best of my
10 recollection, they did say that there had not been an order
11 placed.

12 Q. In other words, as we sit here today on
13 October 28, 2009, the State of Arizona possesses no
14 information whatsoever to confirm or even suggest that
15 Mr. Democker actually ordered any controlled substance;
16 poisonous gas, controlled gas, anything of the sort, despite
17 all this research; isn't that true?

18 A. At this point, yes.

19 MR. SEARS: Thank you.

20 Relevance.

21 THE COURT: Overruled. 79 is admitted.

22 DIRECT EXAMINATION RESUMED

23 BY MR. BUTNER:

24 Q. Detective Page, did you find evidence that
25 Mr. Democker was taking steps in a progression toward

1 ordering carbon monoxide gas?

2 A. Yes.

3 Q. What were those steps?

4 A. The Internet searches that he did with date stamps
5 attached to them as to when he did them.

6 Q. And let's go step by step. When you say "the
7 Internet searches that he did with date stamps attached to
8 them," you just indicated you were referring to those history
9 documents in front of you?

10 A. The Internet history, yes.

11 Q. Okay. And that shows the dates when he last
12 contacted those particular sites?

13 A. Yes.

14 Q. Okay. And then we have just been talking about a
15 list that you prepared to assist yourself from Mr. Democker's
16 computer; is that correct?

17 A. Yes.

18 Q. And what do you call that list?

19 A. Are you referring to this item here, No. 78?

20 Q. Yes.

21 A. This is an EnCase bookmark report that I created
22 to document those items that I found that are contained in
23 it.

24 Q. You created it from what?

25 A. From the data that I was looking through on his

1 computer.

2 Q. So it actually is data that came out of
3 Mr. Democker's computer?

4 A. Yes, it is.

5 Q. Okay. And you put it in, in a numerical form
6 there in front of you -- you numbered each of those entries;
7 is that right?

8 A. They were numbered by the system when it produced
9 the report, yes.

10 Q. Okay. And one of the places that he contacted was
11 that place -- Matheson -- what is it?

12 A. Matheson Tri-Gas.

13 Q. Okay. And then you indicated that he contacted
14 other purveyors of carbon monoxide; is that right?

15 A. Yes.

16 Q. And one of those was Praxair; is that right?

17 A. Yes.

18 Q. Let me show you what's been marked as Exhibit
19 No. 80.

20 Why don't you keep this in front of you,
21 and then we will put these to the side.

22 Do you recognize that?

23 A. Yes, I do.

24 Q. What is that?

25 A. That is a -- looks like a specification sheet for

1 carbon monoxide with the "Praxair" name on it.

2 MR. BUTNER: Okay. And I would move for the
3 admission of Exhibit 80.

4 MR. SEARS: I have an Objection, Your Honor.

5 THE COURT: Pardon?

6 MR. SEARS: Question on voir dire. I have an
7 objection.

8 THE COURT: Go ahead.

9 VOIR DIRE EXAMINATION

10 BY MR. SEARS:

11 Q. Detective Page, precisely which gas was used to
12 kill Carol Kennedy in this case?

13 A. The information I have on this case, there was no
14 gas used.

15 Q. She was beaten to death in her home, wasn't she?

16 A. Yes.

17 Q. Poison gas had nothing to do with her death;
18 correct?

19 A. I didn't do the autopsy. I can't state.

20 Q. You have been involved in this case for how long?

21 A. Since last year.

22 Q. You know, don't you, Detective, that there is no
23 evidence whatsoever to suggest that poison gas had anything
24 to do with the death of Carol Kennedy on July 2nd last year;
25 don't you?

1 A. That information is correct.

2 MR. SEARS: Relevance.

3 THE COURT: Overruled. 80 is admitted.

4 DIRECT EXAMINATION RESUMED

5 BY MR. BUTNER:

6 Q. Now, let me show you what has been marked as
7 Exhibit 81. Do you recognize that document?

8 A. Yes, I do.

9 Q. What is it?

10 A. It is a letter from the Internal Revenue Service
11 to Steven Democker notifying him that they have assigned him
12 an employer identification number.

13 Q. And what did Mr. Democker do with that employer
14 identification number?

15 MR. SEARS: Foundation.

16 THE COURT: Sustained. More as to form of the
17 question for my viewpoint.

18 MR. SEARS: Thank you, Your Honor.

19 BY MR. BUTNER:

20 Q. Do you know what Mr. Democker did with that
21 employer identification number, Detective Page?

22 A. Yes, I do.

23 Q. What did he do with it?

24 A. He entered it on Item No. 79, the restricted
25 chemical compliance inquiry, which is used by a person

1 attempting to purchase a restricted chemical.

2 Q. Who did he provide that information to, in other
3 words, the employer identification number. Do you know?

4 A. No, I don't.

5 Q. Was he preparing an application to obtain carbon
6 monoxide gas? Did you find evidence of that?

7 A. Yes, I did.

8 Q. Was that in his computer?

9 A. Yes.

10 Q. And who was he submitting that application to?
11 Could you tell?

12 A. No, I could not.

13 Q. Did he go so far as to get OSHA-required documents
14 in order to obtain carbon monoxide?

15 A. Yes, he did.

16 Q. Who did he get those from?

17 A. From the Internet.

18 Q. And what companies or Internet sites provided him
19 with that information?

20 A. Predominantly, Praxair.

21 Q. Is that the reason, apparently, he was contacting
22 Praxair?

23 A. It would appear, yes.

24 Q. And did he obtain information concerning other
25 restricted substances?

1 A. Yes.

2 Q. What were those?

3 A. He obtained information related to other
4 substances. I do not know if they are restricted or not.
5 But dichlorobenzene was a chemical that he did some research
6 on.

7 Q. Let me show you what has been marked as
8 Exhibit No. 86.

9 Do you recognize that?

10 A. Yes.

11 Q. What is it?

12 A. It appears as a specification sheet for carbon
13 monoxide from Matheson Tri-Gas.

14 Q. Okay. And did you find information that
15 Mr. Democker actually was setting up a business so that he
16 could obtain carbon monoxide?

17 A. Yes.

18 Q. Where did you get that information?

19 A. From No. 79, the Restricted Chemical Compliance
20 Inquiry from Matheson Tri-Gas.

21 Q. What was the name of Mr. Democker's business that
22 he was setting up?

23 A. He listed it as "Dr. Steven C. Democker, dba, DBD
24 Research and Consultant."

25 Q. And is that the entity through which he was making

1 inquiry to Matheson?

2 MR. SEARS: Objection. Assumes facts not in
3 evidence. There is no evidence that he made any inquiry to
4 Matheson. The evidence is just the contrary. They never
5 heard from him.

6 THE COURT: Rephrase the question, please.

7 BY MR. BUTNER:

8 Q. Detective Page, did Mr. Democker make Internet
9 inquiry of Matheson?

10 A. He made more than an Internet inquiry because --

11 Q. What did he do? What did he do?

12 A. That, I don't know.

13 Q. What do you have in your hand that evidences his
14 contact with Matheson?

15 A. This document was e-mailed to him on March 3rd,
16 2008.

17 Q. From whom?

18 A. From Matheson.

19 Q. So Matheson sent him something over the Internet?

20 A. Via e-mail, yes.

21 Q. And did Mr. Democker fill that out on his
22 computer?

23 A. Yes. It appears -- I would say yes, he did.

24 Q. Did he put information in the blanks on the
25 Matheson document?

1 A. The way the document is in the computer, I can't
2 say who actually filled it out.

3 Q. On Mr. Democker's computer, had somebody put
4 information in the Matheson document?

5 A. I would say yes.

6 Q. What information was put into the Matheson
7 document?

8 MR. SEARS: Objection. 79 is not in evidence,
9 is it, Your Honor?

10 MR. BUTNER: I believe it is.

11 THE COURT: 79 is.

12 MR. SEARS: Is it? Thank you.

13 THE WITNESS: Item 79, the complete legal name
14 of the entity purchasing the product, which I already stated,
15 the address, 1716 Alpine Meadows Lane, Prescott, Arizona
16 86303.

17 BY MR. BUTNER:

18 Q. Whose address is that?

19 A. That is Steven Democker's.

20 The type and place of formation, the
21 entry is "sole proprietorship, Prescott, Arizona."

22 Q. And what is the name of this sole proprietorship?

23 A. DBD Research and Consulting.

24 Q. And isn't that a dba for somebody?

25 A. Yes. For Steven C. Democker.

1 Q. Right.

2 A. The shipping address has an entry.

3 Q. What is the shipping address?

4 A. It states "dash same dash."

5 Q. Same as the home address for Steven Democker?

6 A. Correct. Further down the page there is
7 identification information, and underneath that the form
8 requests the federal employer tax identification number. The
9 number placed in there is 26-2247202, which is the same
10 number that was issued him by the IRS on Item No. 81.

11 Q. So it appears as if Mr. Democker was taking steps
12 toward the purchase of gas from Matheson; is that right?

13 MR. SEARS: Leading.

14 THE COURT: Sustained.

15 BY MR. BUTNER:

16 Q. Let me show you what has been marked as Exhibit
17 No. 90.

18 Do you recognize that?

19 A. Yes.

20 Q. What is it?

21 A. It is a Material Data Safety Sheet for carbon
22 monoxide from Praxair.

23 Q. And was that obtained from Mr. Democker's
24 computer?

25 A. Yes, it was.

1 Q. And Exhibit No. 83, what is that?

2 A. That is a Material Data -- excuse me -- Material
3 Safety Data Sheet for 1,2-dichlorobenzene, 99 percent, and
4 that is from Acros Organics.

5 THE COURT: The number on that exhibit, again,
6 please.

7 THE WITNESS: 83.

8 BY MR. BUTNER:

9 Q. And where did you get that particular document?

10 A. From Steven Democker's laptop computer in the
11 "Book Research" folder.

12 MR. BUTNER: And I would move for the
13 admission of Exhibit 83.

14 MR. SEARS: Relevance.

15 THE COURT: Overruled.

16 83 is admitted.

17 MR. BUTNER: And I would move for the
18 admission of Exhibit No. 90.

19 MR. SEARS: Same objection.

20 THE COURT: Overruled.

21 90 is admitted.

22 BY MR. BUTNER:

23 Q. And what do you call 90? What is it?

24 A. It is a Material Safety Data Sheet.

25 Q. Is there a reason that someone has to get a

1 Material Safety Data Sheet?

2 A. Yes.

3 Q. What is that?

4 A. If an entity -- a person, business, whatever, is
5 going to possess certain products, they can be chemicals,
6 fertilizers, insecticides, whatever -- certain of those
7 products require that that entity has this document, a
8 Material Safety Data Sheet present, on the premises where the
9 product is stored.

10 And the purpose for the sheet is
11 documenting safety procedures, handling procedures, what to
12 do if there's a fire involved and the product is there, how
13 to handle any potential health hazards, et cetera.

14 Q. And who requires a person to have such a data
15 sheet?

16 A. I believe OSHA does or some federal agency.

17 Q. And that was in connection with what type of
18 substance?

19 A. Carbon monoxide.

20 Q. And let me show you what has been marked as
21 Exhibit No. 87.

22 Do you recognize that?

23 A. Yes.

24 Q. What is it?

25 A. It is a listing of bottles -- portable bottles

1 from Matheson for cylinders, as they call them, for gases --
2 for containing gases, in various sizes of cylinders.

3 Q. And where did you get that particular document?

4 A. The same as the other items that we have discussed
5 here in the "Book Research" folder on Steven Democker's
6 computer.

7 MR. BUTNER: I would move for the admission of
8 Exhibit No. 87.

9 MR. SEARS: Question on voir dire, Your Honor?

10 THE COURT: You may.

11 VOIR DIRE EXAMINATION

12 BY MR. SEARS:

13 Q. Detective Page, these safety sheets that we've
14 talked about here, you just download them off a Web site;
15 don't you?

16 A. I believe you can, yes.

17 Q. That's all there is to it. If we had a laptop
18 here in the courtroom with an Internet connection, we could
19 print out that same safety sheet you have right there;
20 correct?

21 A. I believe so.

22 Q. That's all it takes?

23 A. Yes.

24 MR. SEARS: Relevance.

25 THE COURT: Overruled.

1 87 is admitted.

2 DIRECT EXAMINATION RESUMED

3 BY MR. BUTNER:

4 Q. In regard to 87, are those the types of containers
5 that Matheson indicates you can use to contain carbon
6 monoxide?

7 A. Yes.

8 Q. So Mr. Democker took what steps, then, in this
9 "Book Research" file, toward getting carbon monoxide?

10 A. He has obtained the form from Matheson that would
11 be required for disclosure, what he was going to do with the
12 product, and his business information in order to obtain it.
13 He obtained a federal employer identification number, which
14 he entered on that form. He's obtained numerous documents
15 pertaining to the safety of handling that product, including
16 a -- documenting a safety plan, which is one of the items
17 specified on the compliance inquiry.

18 Q. Did he do anything in connection with his sole
19 proprietor business that he was establishing in the "Book
20 Research" file?

21 A. The only item I found in there is the document for
22 the -- from the IRS.

23 Q. Did he do anything in regard to listing his
24 business with Dun & Bradstreet?

25 A. I don't know if he listed it or not.

1 Q. Did he get a Dun & Bradstreet number?

2 A. I don't know.

3 Q. Did he provide one on the form that he was filling
4 out?

5 A. No.

6 Q. Did you find indication that he was researching
7 that in his computer?

8 A. Yes, I did.

9 Q. And in connection with that research did you find
10 indications that he was researching in his computer how to
11 kill someone, how to make a homicide look like a suicide?

12 A. Yes, I did.

13 Q. And where did you find that?

14 A. I found it in "Internet history," where he had
15 been to Web sites and he had actually typed in searches using
16 those terms or similar terms, and I found remnants of Web
17 pages of the search results on his computer.

18 Q. Okay. Let's change gears.

19 I put a stack of e-mails in front of you.
20 Do you recognize those?

21 A. Yes, I do.

22 Q. Let me just -- I'm going to look at the exhibits
23 on the back, and let's see. Starting with Exhibit No. 30,
24 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45,
25 46, 47, 48, 49 -- no, not 49. Through 48.

1 And then resuming again at Exhibit 53,
2 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, and 65.

3 Where did those come from?

4 A. I -- using the EnCase forensic images from Steven
5 Democker's laptop, Item No. 411, Carol Kennedy's computer
6 tower, which is listed as Evidence No. 835 --

7 Q. Okay. You're using evidence numbers for the
8 sheriff's department; aren't you?

9 A. Yes, I am.

10 Q. Please don't do that. We've got enough evidence
11 numbers in this case already.

12 A. Certainly

13 Q. You went to Steven Democker's laptop; is that
14 correct?

15 A. And Carol's and Steven's work computer.

16 Q. Those three computers; right?

17 A. Correct.

18 Q. And what did you do?

19 A. I loaded the forensic images of those three
20 computers into this AccessData's FTK software.

21 Q. That is the Forensic Tool Kit software?

22 A. Yes, it is. And pulled out just the e-mail data
23 from those images for those three computers, sorted it by
24 date, and then these documents were printed from that
25 information obtained there.

1 Q. And was there a further qualifier that the e-mails
2 be between Steven Democker and Carol Kennedy?

3 A. Yes. These were all between -- just between the
4 two of them and dated from May 1st through July 2nd, 2008.

5 Q. And basically, is there a general topic of
6 conversation that you discovered when you reviewed those
7 e-mails?

8 A. Yes. The topic typically revolves around money
9 and the divorce.

10 Q. Money and the divorce between Steven Democker and
11 Carol Kennedy?

12 A. Yes.

13 MR. BUTNER: I would move for the admission of
14 those numbered exhibits that I enumerated a little bit
15 earlier, Judge.

16 THE COURT: 30 through 48, 53 through 65?

17 MR. BUTNER: Correct.

18 THE COURT: Mr. Sears.

19 MR. SEARS: I don't have a copy of those
20 e-mails. I will need to sit and look at every one of them.

21 THE COURT: Let's take a five-minute break,
22 and I will let you take a look at each of them. Let me know
23 when you're ready.

24 MR. SEARS: Thank you, Your Honor.

25 (Brief recess.)

1 THE COURT: Mr. Sears, you had a chance to
2 take a look at the many exhibits that were referenced 30 to
3 48, 53 to 65?

4 MR. SEARS: What I have had a chance to look
5 at, Judge, is what Mr. Butner left on our table here, which
6 is a pile of e-mails, perhaps a hundred pages or so,
7 beginning -- they are out of order. Chronologically, they
8 begin maybe May 1st, 2008 and end sometime in June 2008.

9 They are not -- I can't tell which ones
10 are which exhibits, because they are not marked. So I don't
11 know which individual e-mail corresponds with each exhibit
12 number. They are blank or nearly blank pages here on my
13 copy.

14 THE COURT: Does your copy have the references
15 that are shown in the clerk's exhibit list? For instance,
16 the -- 30 is listed as May 1st '08; 31 is May 4, '08. But
17 then they have a number reference message 0522. I don't know
18 if that's a Bates number or some other description.

19 MR. SEARS: These are not Bates-stamped. None
20 of these are -- the copy that I have.

21 I saw the clerk gave me an exhibit list
22 this morning, but it looked to me like, from a quick read,
23 that it was from last week's hearing because it showed
24 autopsy photographs. I'm looking to see if there's a more
25 current one.

1 THE COURT: There is an updated one on your
2 desk.

3 MR. BUTNER: I lost mine, too.

4 MR. SEARS: I don't know if I lost it so much
5 as I may not have looked at it.

6 THE COURT: On her updated list that she
7 provided to the Court earlier this afternoon, there is some
8 reference to the message number to assist in which exhibit is
9 which message number. I will be happy to have Phil make
10 another copy. Rachel is making another copy of the list for
11 you right now.

12 MR. SEARS: Here is a picture of Katie
13 Democker at the airport on the way to Africa. I mean, I
14 just -- it doesn't have any other -- it's just a piece of
15 paper. I don't know if it is connected to another e-mail or
16 what it is.

17 THE COURT: So you are telling me you need
18 more time to take a look at this, I think.

19 MR. SEARS: Here's my overarching concern,
20 Judge. There are, I think -- I am trying to remember the
21 numbers now. I get a little confused. But there are tens of
22 thousands of e-mail messages on Mr. Democker's laptop.

23 And this is taken out maybe -- we go from
24 30 to 40, so maybe 20 e-mail messages over a period of time
25 that -- I mean, some of them are -- you can look at the text

1 in this, Your Honor -- single-spaced, small type that goes on
2 for pages and pages and pages. They are not in sequence.
3 They don't show a string of e-mails.

4 THE COURT: They are kind of in sequence the
5 way in which they have been numbered for the exhibit number
6 that is on the back. 30 is the first one, starting May 1st
7 of '08.

8 If you look at the clerk's list that I
9 just had her provide a new copy for you, you will see all of
10 the exhibits as they are numbered are chronological. I am
11 not saying that there aren't some that skip over days and
12 that they may be on the original computer or computers,
13 plural, other e-mails that were exchanged in between those
14 two. I recognize what you are saying about that as a
15 problem.

16 MR. SEARS: Well, here is my concern. There
17 is no way that I can think of, within reason, to place these
18 e-mail messages in any meaningful context for this hearing or
19 any other purpose because Detective Page has said that these
20 deal with money matters and the divorce.

21 I have highlighted one page. This is a
22 message body. The entire message has to do with a dispute
23 between Carol and Steve over parenting Sharlot. It doesn't
24 have anything to do with money.

25 There are pictures, as I pointed out, of

1 the children. There are pictures of Steve and his daughter,
2 in this case.

3 I have had the computer, and we have
4 worked with the computer. We have prepared a string of
5 e-mails to use today on a specific issue, on a question of
6 whether a threat was made by Carol to Steve on March 1st,
7 2008, to do something to him and how that went out. We have
8 all the e-mails in sequence related to those with the summary
9 of what is in there.

10 There are no e-mails in our exhibit that
11 deal with any other subject. They are all in sequence, all
12 relating to that particular issue.

13 By contrast, I couldn't even begin to
14 understand how these e-mails relate to each other, what they
15 intend to show, what aggravators they could possibly relate
16 to. This is just a grab-bag selection of, perhaps, 50,000
17 e-mails reduced to however many pages this is, and it is
18 being presented here today in this context for the first
19 time.

20 This summary and this compilation of
21 e-mails, of course, has never been disclosed to us. And to
22 say that it proves some point or stands for some proposition,
23 I think, Judge, is impossible. It's impossible for me to
24 answer.

25 I would have to try and read every

1 e-mail, while I am listening to Detective Page with my other
2 good ear, and try to figure out what it all means.

3 There is one e-mail in here that I have
4 seen before, because I thought it was pretty significant, in
5 which Mr. Democker says, "Thanks for" --

6 THE COURT: Don't start quoting from something
7 that isn't admitted yet.

8 MR. BUTNER: It's okay with me, Judge. I have
9 no objection to that.

10 THE COURT: All right.

11 MR. SEARS: "I don't like you much at the
12 moment, but I bet that's open to change, because I still love
13 you very much."

14 This is from Mr. Democker after the
15 divorce, to Carol. Now, what that has to do with money, what
16 that has to do with any of the aggravators in this case, I am
17 really at a loss.

18 There is no possible way I can respond to
19 these exhibits or even to really formulate any objection,
20 other than pulling them apart and going through each one
21 point by point and trying to figure out how it connects to
22 any aggravator in this case.

23 THE COURT: Well, I understand Mr. Butner was
24 trying to speed things up to get them admitted. If we need
25 to go through them point by point, I guess we'll go through

1 them point by point.

2 MR. BUTNER: And I will lay further foundation
3 in that regard, Judge.

4 THE COURT: All right. Proceed.

5 MR. BUTNER: Thank you.

6 DIRECT EXAMINATION RESUMED

7 BY MR. BUTNER:

8 Q. Detective Page --

9 MR. SEARS: I'm sorry, Your Honor. I thought
10 Mr. Butner had moved the admission of each of these and I had
11 objected --

12 MR. BUTNER: I did, and you objected, sir.
13 And I indicated that I will lay further foundation. I am
14 assuming it is a foundational objection.

15 MR. SEARS: Thank you.

16 MR. BUTNER: May I proceed, Your Honor?

17 THE COURT: You may.

18 MR. BUTNER: Thank you.

19 DIRECT EXAMINATION RESUMED

20 BY MR. BUTNER:

21 Q. Detective Page, you -- if I understood your
22 earlier testimony, you retrieved all of the e-mails between
23 Carol Kennedy and Steven Democker on those three computers
24 for the time period of May 1st through July 2nd of 2008; is
25 that correct?

1 A. I would have to look at the last item.

2 Referencing Exhibit 65, the date is
3 July 2nd, 2008.

4 Q. So what's the answer to my question?

5 A. Yes. That is correct.

6 Q. And I asked you, if you will recall my previous
7 question, what was the general topic most pervasive, from
8 your point of view, in reviewing those e-mails?

9 MR. SEARS: Objection. Foundation, Your
10 Honor.

11 MR. BUTNER: I will withdraw the question.

12 Q. In the interest of completeness, did you exclude
13 any e-mails between Steven Democker and Carol Kennedy?

14 A. Not intentionally. I obtained every one that I
15 could see that was between those two between those dates.

16 Q. And you used a special program to do that; right?

17 A. Yes.

18 Q. That program, basically, to get all of the
19 e-mails; is that correct?

20 A. Yes.

21 Q. Between those two parties?

22 A. Yes.

23 Q. Did there appear to be a dispute going on through
24 those e-mails between Carol Kennedy and Steven Democker?

25 MR. SEARS: Objection. Foundation.

1 Speculation.

2 THE COURT: Overruled.

3 MR. SEARS: Dispute about what?

4 THE COURT: Overruled.

5 You may answer.

6 THE WITNESS: Yes.

7 BY MR. BUTNER:

8 Q. A dispute about what?

9 A. About money, predominately.

10 MR. BUTNER: I would move for the admission,
11 again, of Exhibits 30 through 48 and Exhibits 53 through 65.

12 THE COURT: Mr. Sears.

13 MR. SEARS: Your Honor, I am going to have a
14 foundation objection to each one of these exhibits. In turn,
15 I now have the clerk's list, and I am prepared to do that on
16 voir dire with this witness.

17 THE COURT: Go ahead.

18 MR. SEARS: Thank you.

19 VOIR DIRE EXAMINATION

20 BY MR. SEARS:

21 Q. Detective Page, if you could please look at
22 Exhibit 30 for identification for me, please.

23 A. All right.

24 Q. Do you have it in front of you?

25 A. Yes.

1 Q. This is an e-mail dated May 1, 2008, at 7:48 p.m.
2 from Steven Democker -- I'm sorry, from Carol to Steve;
3 correct?

4 A. Yes.

5 Q. And in this -- this would be, of course, about
6 four weeks prior to the divorce settlement; correct?

7 A. I believe so, yes.

8 Q. Have you studied carefully the divorce file in
9 this case?

10 A. No.

11 Q. Are you a divorce lawyer?

12 A. No.

13 Q. Do you have any special training or knowledge or
14 expertise in divorce law?

15 A. No.

16 Q. Are you a CPA?

17 MR. BUTNER: Judge, I am going to note an
18 objection to this.

19 THE COURT: Sustained.

20 Let's stay on the foundation and what the
21 purpose of voir dire is, Mr. Sears.

22 BY MR. SEARS:

23 Q. You testified that this e-mail, Exhibit 30 for
24 identification, manifests some dispute over money between the
25 parties; is that right?

1 A. No, sir. I testified that this collection of
2 e-mails -- my interpretation was collectively they were a
3 dispute about money.

4 Q. I am looking only at Exhibit 30. There is no
5 dispute about money in this question. There is a discussion
6 between two people as they run up to a divorce trial, about
7 exchanging information. That's what Exhibit 30 is; isn't it?

8 A. I would have to read it.

9 MR. BUTNER: Please do.

10 THE WITNESS: All right.

11 (Whereupon, the witness reviews a
12 document.)

13 I do see a disagreement about money in
14 this document.

15 BY MR. SEARS:

16 Q. In point of fact, Exhibit 30 for identification is
17 Carol Kennedy sending an e-mail to Steve, saying that she has
18 information that she wants from him and wants him to correct
19 something. And he writes back and says here is a revised
20 spreadsheet --

21 THE COURT: Don't read from it if it is not
22 admitted.

23 MR. BUTNER: Judge, I'd move for its admission
24 at this time.

25 THE COURT: Mr. Sears.

1 MR. SEARS: Your Honor, I would like the Court
2 to look at this, please. And I will tell you that my
3 objection is relevance, foundation, materiality, lack of
4 personal knowledge of this witness, hearsay.

5 THE COURT: Foundation and hearsay are
6 overruled. Relevance is overruled.

7 What other objections did you have?

8 MR. SEARS: Not to 30.

9 THE COURT: 30 is admitted.

10 BY MR. SEARS:

11 Q. Would you look at Exhibit 31, please, for
12 identification.

13 A. All right.

14 Q. 31 is an e-mail from Steve to Carol, dated May 4,
15 2008, in which he transmits pictures of their daughter and
16 her boyfriend before the prom. That is the sum total of this
17 exhibit; isn't it?

18 A. Yes.

19 Q. There is nothing at all in Exhibit 31 for
20 identification about any financial dispute. It's parents
21 sharing photographs of their child; isn't it?

22 A. Yes.

23 MR. SEARS: Relevance.

24 MR. BUTNER: No objection to that objection.

25 THE COURT: I understand. Sustained.

1 BY MR. SEARS:

2 Q. Would you look at Exhibit 32, please.

3 A. All right.

4 Q. Exhibit 32 is an e-mail dated May 4 at 5:26 that
5 transmits another prom picture of Sharlot and Jake in May;
6 correct?

7 A. Yes.

8 MR. SEARS: Same objection.

9 MR. BUTNER: No objection to that objection.

10 THE COURT: I'll sustain the objection.

11 BY MR. SEARS:

12 Q. 33, if you'll look at that, please, message 0539.

13 A. Yes.

14 Q. Carol says: "Thank you so much for the lovely
15 photos of Shar and Jake at Hassayampa before her prom. You
16 look great, too."

17 MR. SEARS: Same objection.

18 MR. BUTNER: Same response.

19 THE COURT: I will sustain your objection,
20 Mr. Sears.

21 BY MR. SEARS:

22 Q. Would you look at message 0581, which is Exhibit
23 34 for identification. Carol forwards Steve a message from
24 Tim and Bonnie Barnett {phonetic spelling}, here in Prescott,
25 about the risk of getting breast cancer for a female through

1 drinking bottled water; correct?

2 A. Yes.

3 MR. SEARS: Same objection.

4 MR. BUTNER: No objection.

5 THE COURT: That is the entirety of what that
6 exhibit is about?

7 THE WITNESS: That exhibit is a forward of a
8 forward of a forward of a forward, but, yes, Tim and Bonnie
9 Barnett --

10 THE COURT: Maybe to hasten this along, if I
11 take another break and you all go through those exhibits,
12 again, and if there is -- if the exhibit is going to be
13 withdrawn as a result of a relevancy objection, I would
14 rather do it a little bit more rapidly than what this process
15 is doing --

16 MR. SEARS: I am more than happy to do that,
17 Your Honor.

18 THE COURT: Let's take another recess to allow
19 you to do that.

20 (Brief recess.)

21 THE COURT: I hope that helped somewhat
22 getting through these.

23 Mr. Sears, you may continue.

24 MR. SEARS: Judge, during the recess,
25 Mr. Butner and I reviewed the remaining exhibits and the only

1 one we could agree that the State would withdraw is 62 for
2 identification.

3 THE COURT: Okay. So 62 is withdrawn.

4 MR. SEARS: But there is a stray page, which I
5 think is just one page that I think is connected to
6 Exhibit 62, because it talks about the same subject matter,
7 and so it's just one page. It was not stapled to anything
8 else. I don't know if it is marked separately. I can't find
9 it on the exhibit list.

10 MR. BUTNER: It is, Mr. Sears. It's
11 Exhibit 61, where it says "main message header," dated June
12 29, 2008.

13 MR. SEARS: Would the State withdraw
14 Exhibit 61 for identification?

15 MR. BUTNER: Yes, those two exhibits.

16 THE COURT: 61 is also withdrawn.

17 MR. SEARS: Yes, sir. Thank you.

18 I have a few more questions on general
19 voir dire for the remainder of these regarding foundation.

20 THE COURT: Go ahead.

21 VOIR DIRE EXAMINATION RESUMED

22 BY MR. SEARS:

23 Q. Detective Page, did I understand you to say on
24 direct examination with Mr. Butner here this afternoon that
25 what you did was attempt to extract all of the e-mail traffic

1 between Carol and Steve between 1 May and 2 July, 2008?

2 A. Yes.

3 Q. Tell me again which computers you looked at to
4 obtain that information.

5 A. Steven Democker's laptop, Steven Democker's
6 business computer from his work, and Carol Kennedy's tower
7 from her home.

8 Q. Did Carol Kennedy have a laptop?

9 A. Not that I am aware of.

10 Q. So all the e-mails that Carol Kennedy wrote were
11 on this computer tower during that time period?

12 A. Those are the computers that I used to obtain this
13 data.

14 Q. From the search warrant information in this case,
15 that tower was retrieved several days after her death and was
16 described as a crashed tower.

17 A. Not that computer.

18 Q. That's a different one?

19 A. This is a different one.

20 Q. This is a computer that was in the room where she
21 was found?

22 A. I wasn't present when it was seized. I don't know
23 where it was found.

24 Q. Are you saying here today that these remaining
25 exhibits, plus the one that the State has withdrawn,

1 constitutes all -- every single e-mail between Carol and
2 Steve on those computers in that time period?

3 A. No, I am not.

4 Q. Why not?

5 A. I loaded those EnCase images into the software,
6 ordered by date, and did a manual search. And I am subject
7 to have missed one visually.

8 Q. So you went through and produced a report, and
9 then you went through and looked at each message?

10 A. I looked at the "To" and "From" columns in the
11 report, yes.

12 Q. So you can't say that this is all of the e-mails?

13 A. No, I can't.

14 Q. Now, have you read all these e-mails?

15 A. I've skimmed through them, yes.

16 Q. Other than the fact that they appear to be talking
17 about money, do you really understand that there was some
18 ongoing dispute in this period of time, particularly after
19 May 28, between these people, about money?

20 A. There was a constant dispute between these people
21 about money.

22 Q. And that was your search criteria. You were just
23 simply looking -- first you wanted all of the e-mails, and
24 then you wanted to be able to characterize theme, with the
25 obvious exceptions -- the pictures of their children,

1 et cetera -- as being disputes about money?

2 MR. BUTNER: Objection. That misstates his
3 testimony, and it's argumentative.

4 MR. SEARS: I am thinking that's what he said,
5 Your Honor.

6 THE COURT: I think it misstates the
7 testimony, but I will overrule the objection as far as the
8 argumentative is concerned.

9 Why don't you rephrase.

10 BY MR. SEARS:

11 Q. Is it your testimony here today, Detective, that
12 all of these remaining e-mails in one way or another are
13 evidence of -- and each one individually -- evidence of some
14 dispute between Carol and Steve about money?

15 A. No.

16 Q. What else is contained in these e-mails, then?

17 A. In the remaining e-mails?

18 MR. BUTNER: Objection. I'm going to note
19 another objection. What he's asking him to do is to testify
20 about exhibits that are not admitted into evidence. I would
21 like to have them admitted, and I would so move at this time.

22 MR. SEARS: I am on voir dire, Your Honor, and
23 this witness cannot lay a foundation for the opinion he just
24 gave.

25 THE COURT: Well, the voir dire goes to the

1 admissibility of the exhibit. That's what the purpose of it
2 is.

3 So I'm going to sustain the objection
4 with regard to having him do further characterization of
5 that, what is in the exhibit.

6 MR. SEARS: That being the case, Your Honor,
7 these are irrelevant. They lack completeness by this
8 witness's own testimony. Their admission would be unfair and
9 prejudicial, even in the limited context of a Chronis
10 hearing, because they are being offered for a specific
11 proposition that Mr. Butner's already extracted from this
12 witness, which these documents do not support.

13 Therefore, admitting these documents out
14 of context in this manner would be unfair and deny my client
15 due process and would violate the Rules of Evidence,
16 particularly Rule 5. They are not reliable.

17 THE COURT: What is your contextual objection?
18 I guess I don't understand that.

19 The witness testified that he couldn't
20 guarantee me that these were all of the e-mails -- guarantee
21 us that these were all of the e-mails between Steven Democker
22 and Carol Kennedy during the time frame in question, but that
23 he looked for them all and believes them to be, as I
24 understand his testimony.

25 So why does that take the discussion

1 between the two that is exemplified by the e-mails out of
2 context?

3 MR. SEARS: Because we don't know -- as the
4 Court well knows and will come to learn, I am certain in this
5 case, e-mail discussions are an ongoing process. For
6 example, in an exhibit that we're going to --

7 THE COURT: Like a conversation. And I
8 recognize that, like conversations that you and I might have
9 over the phone, there may be some other discussions that you
10 and I have in person, so that it may not be representative of
11 each and every communication between the two of us. There may
12 be letters that you send me or I send you, so there may be
13 some additions to what is contained in the e-mail. But it
14 doesn't detract from the fact of the e-mail still being
15 statements as between the two parties.

16 MR. SEARS: The problem that I have, Your
17 Honor, is that these e-mails are clearly being offered by the
18 State for the truth of the matter asserted for a particular
19 purpose with a particular characterization, whether this
20 witness is the one that makes it or some other witness that
21 makes it.

22 What I am suggesting in part is that
23 particularly with e-mails, particularly with these two
24 people, where you can see that they reply right on top of
25 each other's e-mails, it is unfair and misleading to submit

1 what may only be a partial thread on the same subject matter,
2 when I have one example on one topic where there are 15
3 separate e-mails between Steve and Carol on one topic, all on
4 the same day, all -- so if you took six or seven of them and
5 said this represents their discussion about this and didn't
6 submit either intentionally or because you couldn't find
7 them, the other seven or eight, you have lost not just the
8 subsequent conversation, you have lost a principle part of
9 that conversation between the parties.

10 This witness clearly doesn't know
11 anything other than he can read them and say well, it looks
12 like these people are squabbling about money. He doesn't
13 know anything about the history of this part of the case or
14 these facts. Yet, the State, through this witness, wants the
15 Court to look at these e-mails and make a determination about
16 probable cause on one or more of the aggravators, and that's
17 the concern I have.

18 And the procedural objections I have, the
19 foundation objections, the completeness objections, are
20 simply the underpinnings of the argument. The bigger
21 objection I have is the unfairness of this and the suggestion
22 that this is a way to prove, even in a Chronis hearing,
23 anything, I think, is improper.

24 I think the State, if it has evidence to
25 bring on about actual disputes -- for example, if they're

1 going to allege that this is part of the F-13 aggravator,
2 then they can do that. But to simply bring a pile of e-mails
3 in and say somewhere in this you ought to be able to get a
4 feeling about the level of disputes between the parties is a
5 real problem -- is a real problem. Because there are
6 probably 50,000 other e-mails before and after these,
7 certainly before these that put these e-mails in context,
8 there are divorce documents, there are letters, there are
9 witnesses.

10 There is no way that I think, Your Honor,
11 you should be able to extract the kind of evidence that the
12 State wants you to receive in this case this way from these
13 documents. This is simply not the way to do it.

14 By contrast, the State had alleged in the
15 F-13 aggravator that there was a threat made by Carol to
16 Steve, and in response to that he killed her. That's the
17 basis of the F-13 aggravator, as we understand it.

18 We have found what we think, based on a
19 discovery, is what the State thinks is the genesis of that
20 threat. And we have produced all of the e-mails in response
21 to that which we think, when you read all of the e-mails on
22 that topic, on that threat, to that day, you will receive a
23 different impression.

24 On the other hand, this is just a pile of
25 e-mails.

1 THE COURT: I think that goes to weight, not
2 admissibility of the e-mails, Mr. Sears, and in particular, I
3 think the defense is capable of supplying me with any
4 additional e-mails that you believe or other evidence that
5 you believe is necessary.

6 It's not as though I don't have any
7 background at all on the fact that there were some financial
8 disputes, that there was a divorce going on between
9 Mr. Democker and Miss Kennedy. I am aware of those things by
10 virtue of the prior hearings that we've had in the case.

11 So I think I can sort out in a Chronis
12 hearing the issues that are necessary in a Chronis hearing,
13 but I don't think it goes to the admissibility of the
14 exhibits themselves. I recognize the limitations of what the
15 witness has testified to, that he can't guarantee me that
16 these are all the e-mails between the two parties, even
17 between the dates of May 1st and July 2nd. I take that as
18 something he's acknowledged.

19 MR. SEARS: Am I right in understanding that
20 the Court has also ruled that this witness may not offer any
21 opinions about the contents of these e-mails?

22 THE COURT: Well, the contents of the exhibits
23 introduced are for me to look at, and I don't think that his
24 opinion is helpful to me in regard to that issue.

25 MR. SEARS: Thank you, Your Honor.

1 THE COURT: So I will go ahead and admit them
2 in the kind of bulk in which they were offered.

3 So 34 through 48 are admitted; 53 through
4 60 are admitted; and 63 through 65 are admitted.

5 Those objections stated by Mr. Sears are
6 overruled. I will note that that doesn't speak to whether I
7 have to read them. I recognize that I will have to read them
8 and make my own determinations about what, if any, meaning I
9 could give to them.

10 Mr. Butner.

11 DIRECT EXAMINATION RESUMED

12 BY MR. BUTNER:

13 Q. Detective Page, just to clarify, did you attempt
14 to get all of the e-mails between victim Carol Kennedy and
15 defendant Steven Democker?

16 A. Between those dates aforementioned, yes.

17 Q. You just are not absolutely certain you got them
18 all?

19 A. That's correct.

20 Q. You went through manually and skimmed each and
21 every e-mail between those two on those dates in an effort to
22 do that; is that correct?

23 A. Yes.

24 Q. Do you believe you got them all?

25 A. I believe I do.

1 MR. BUTNER: And if I could see the exhibits
2 now for a moment. Thank you.

3 Well, Judge, based upon the way that
4 you've ruled, I guess you have to read them all, and I am not
5 going to ask the witness to excerpt parts for you. I will
6 just leave it at that. I don't have any --

7 THE COURT: I will say that if either side or
8 both sides, at the conclusion of the hearing, want to submit
9 something that brings out portions or -- of these or other
10 exhibits, I will let you do that.

11 MR. BUTNER: I would ask leave of the Court to
12 do that. Absolutely.

13 I don't have any further questions of
14 this witness at this time.

15 THE COURT: Mr. Sears, are you prepared to go
16 ahead at this point?

17 MR. SEARS: Do you think we could have a brief
18 recess here, Your Honor?

19 THE COURT: That's exactly why I asked,
20 because you all have been in here and working on getting the
21 exhibits, and I had the opportunity to take a break. so I'll
22 grant a recess. Would ten minutes be sufficient?

23 MR. BUTNER: Mr. Sears, would ten minutes be
24 sufficient?

25 MR. SEARS: I'm sorry, Your Honor. Thank you.

1 THE COURT: We will stand in recess for about
2 ten. That way detention can get Mr. Democker to the restroom
3 if he needs one. You may step down in the meantime.

4 (Brief recess.)

5 THE COURT: Record reflects the presence of
6 the defendant, his two counsel, and Mr. Butner for the State.

7 Mr. Sears, you may cross-examine.

8 MR. SEARS: Thank you.

9 CROSS-EXAMINATION

10 BY MR. SEARS:

11 Q. Detective Page, let's go back to the first portion
12 of your testimony here this afternoon dealing with the
13 computer searches.

14 Have you personally read all of the
15 Web-site information from all of the places that you tracked
16 Mr. Democker visiting? For example, if you looked at the
17 Praxair site, have you looked at everything on the Praxair
18 site?

19 A. No.

20 Q. The articles that were in the "Book Research" file
21 that you searched, have you read all those articles?

22 A. No.

23 Q. Okay. I see in the -- I am not sure what exhibit
24 it is, I'm sorry -- the list that you prepared, it might be
25 Exhibit 79; is that --

1 A. I don't have it in front of me.

2 MR. SEARS: You don't have the exhibits. I
3 think it is Exhibit 79. I think that's the list -- may I
4 approach, Your Honor?

5 THE COURT: You may.

6 BY MR. SEARS:

7 Q. Here is Exhibit 79. This is the bookmarks that
8 apparently is an EnCase function -- this bookmark list?

9 A. Yes.

10 Q. This looks kind of familiar, because when we were
11 together in the Simpson hearing -- Item No. 21 is the --

12 MR. BUTNER: Judge -- excuse me for
13 interrupting, Mr. Sears -- I think that that's Exhibit 78. I
14 know those numbers are next to impossible to read.

15 THE COURT: I think the whole thing was a
16 conspiracy to get judges's eyesight destroyed. I have a real
17 hard time with them myself.

18 MR. SEARS: He is right. 78 it is.

19 Q. If you would look at Item 21, please. That is a
20 search using the phrase "even the smallest things can
21 attack." Do you remember that one?

22 A. Yes.

23 Q. That turns out to be the decal on the back of
24 Mr. Democker's automobile; correct?

25 A. As I understand.

1 Q. And the family story with his small children and a
2 little family joke inside the Democker family. That's what
3 that is about; right?

4 A. I don't know what it is about.

5 Q. You don't remember the testimony about that from
6 the Simpson hearing?

7 A. Not in detail.

8 Q. Okay. Now, although I understand you have been
9 given specific tasks in this case, I am certain that you have
10 some general familiarity with much of the evidence in this
11 case and many of the allegations against my client; is that
12 right?

13 A. Subjectively, yes.

14 Q. You understand that the State's allegation is that
15 Mr. Democker on July 2nd got into his former wife's home in
16 the Williamson Valley area and using a golf club bludgeoned
17 her to death while she was talking on the telephone to her
18 mother; correct?

19 A. As I understand it generally, yes.

20 Q. Did you see anything on Mr. Democker's computer --
21 any search you looked at -- anyplace on his computer that
22 suggested that he was researching how to commit a rage crime,
23 a crime involving that kind of violence?

24 A. Not at this point, no.

25 Q. In fact, all the places that you were looking at

1 were sites, at least from the titles, that would indicate how
2 to kill somebody in an undetectable way, using poisonous gas
3 or staging a scene to look like something other than a
4 murder; correct?

5 A. Correct.

6 Q. And yet the allegations that I run out, or the
7 allegations that the State is pursuing against my client,
8 that he beat her to death in her home while she was on the
9 telephone; correct?

10 A. Would you say that again, please.

11 THE COURT: Go ahead.

12 (Whereupon, the relevant portion was read back.)

13 THE WITNESS: Yes.

14 BY MR. SEARS:

15 Q. Now, you told us, I think, that you have no
16 information that would indicate that Mr. Democker ever
17 actually sent in that computer form to Matheson Tri-Gas in an
18 effort to obtain poisonous gas. You have no information that
19 he did that; do you?

20 A. No.

21 Q. And in fact, the form that you saw onlined was not
22 completely filled out; was it?

23 A. No.

24 Q. Now, you said that you found an application for an
25 employer identification number that Mr. Democker filled out

1 online; is that right?

2 A. No. What I found was a letter from the Internal
3 Revenue Service stating that he had been issued an employer
4 identification number.

5 Q. And that letter was found in a folder in the "My
6 Documents" section of his hard drive, called "Personal
7 Assistant," wasn't it?

8 A. No. That was found under the "Book Research"
9 folder -- or inside that folder.

10 Q. Did you find a folder called "Personal Assistant"?

11 A. Not to my memory.

12 Q. Did you look?

13 A. I haven't looked for that particular name.

14 Q. So if Mr. Democker, for example, had been
15 obtaining information about legal requirements to hire a
16 personal assistant for his business, that was not anything
17 you were looking for on his computer; is that fair to say?

18 A. Not up to this point.

19 Q. And in fact, you have no knowledge, do you, of
20 whether or not Mr. Democker was actually researching this
21 topic for a book; correct?

22 A. No.

23 Q. He had a folder called "Book Research," and he had
24 research in that folder; correct?

25 A. He had documents in that folder, yes.

1 Q. Well, you described them as attempts by
2 Mr. Democker to research poisonous gasses and all kinds of
3 other are topics. You said that here today, haven't you?

4 A. Yes.

5 Q. So his research on the Internet was kept in a file
6 called "Book Research"; correct?

7 A. Correct.

8 Q. Now, whether or not you found any plot outlines or
9 any other information or not, you can't tell us here today
10 whether Mr. Democker was researching a book about how to kill
11 somebody in an undetectable way, can you?

12 A. No.

13 Q. The dates that you have told us about for these
14 e-mails, the May 1 through July 2nd date, did you select
15 those dates?

16 A. No they were requested of me.

17 Q. By whom?

18 A. Mr. Butner.

19 Q. Okay. And do you have some understanding as to
20 why those particular dates were selected?

21 A. Just started the date of death and moved backwards
22 a period of time.

23 Q. Do you know when the divorce case was settled?

24 A. I believe May 28, 2008.

25 Q. And you know that it was set for trial on May 28

1 initially; correct?

2 A. That is my understanding.

3 Q. And that instead of proceeding to trial,
4 Mr. Democker and his divorce lawyer and Miss Kennedy and her
5 divorce lawyer met in this building and worked out a
6 settlement; correct?

7 A. I am aware they worked out a settlement. I don't
8 know where.

9 Q. That is not your concern?

10 A. The location of the settlement? No.

11 Q. You don't know anything about it?

12 A. I don't know what building it was.

13 Q. And the period of time that Mr. Butner asked you
14 to search for, when did he ask to you do that?

15 A. I believe that was about a week ago, last Monday.

16 Q. Prior to performing that search in the last week
17 or so at the request of Mr. Butner, had you continued to do
18 your forensic investigation of these computers after
19 June 22nd of this year?

20 A. Yes.

21 Q. Have you written any departmental reports about
22 any of your work since June 22nd?

23 A. No.

24 Q. What work are you doing?

25 A. Continuing with the --

1 MR. BUTNER: Objection to the relevance of
2 this, Judge.

3 THE COURT: Sustained.

4 MR. SEARS: Your Honor, I think the relevance
5 of this is, again, as we said from the beginning of this
6 hearing, the State seems to pay no attention to discovery
7 orders. I now hear that --

8 THE COURT: It doesn't have anything to do
9 with this Chronis hearing, though.

10 MR. SEARS: You set an October 2nd cutoff in
11 this case for disclosure.

12 THE COURT: I made my ruling.

13 MR. SEARS: I understand, Your Honor. If I
14 could be heard, I need to make a record on this, please.

15 THE COURT: Go ahead.

16 MR. SEARS: Thank you.

17 You had asked at our request -- you set
18 at our request that all matters that were going to be raised
19 in this hearing by the State needed to be disclosed to us by
20 October 2nd. This witness has just told us now that the
21 materials, which he brought to court today, these exhibits
22 which the Court has admitted, the ones that the State didn't
23 withdraw, were the product of work that he did after October
24 2nd, which was never disclosed to us.

25 I tried to do what I could over the

1 period of time that I had, but this is precisely the problem,
2 Your Honor, that the State's continued failure to pay any
3 attention to your discovery cutoff dates causes us, in this
4 case, Your Honor. And I would ask that all of the testimony
5 of Detective Page about these e-mails be struck from the
6 record, and that the Court reconsider and sustain my
7 objections to the e-mails that were admitted for late
8 disclosure. That is the only way we can keep this case on
9 track.

10 THE COURT: You are saying that they were
11 never disclosed, Mr. Sears, or that you had this information
12 and simply the packaging of how it's been put together has
13 been put together in the last week.

14 MR. SEARS: The latter. We've had 50,000
15 e-mails --

16 THE COURT: I am going to deny the motion.
17 Proceed.

18 MR. SEARS: I have no other questions of
19 Detective Page.

20 THE COURT: Mr. Butner.

21 REDIRECT EXAMINATION

22 BY MR. BUTNER:

23 Q. Detective Page, you found other evidence in
24 addition to the "Book Research" that the defendant was doing,
25 was research on how to benefit after somebody is murdered;

1 didn't you?

2 A. Yes.

3 MR. SEARS: Beyond the scope of cross. New
4 matter.

5 THE COURT: Sustained.

6 BY MR. BUTNER:

7 Q. The "Book Research" documents in the folder, what
8 were the topics that you found were researched?

9 A. The documents in there pertain to -- if I may look
10 at the exhibit.

11 Q. Please do.

12 A. The documents pertain to carbon monoxide
13 specification sheets and dichlorobenzene safety sheets,
14 halocarbon 14, halocarbon C318, other chemicals -- those
15 being other chemicals.

16 A description of an invention and ZIN
17 confirmation, the letter -- or the form for Matheson for
18 obtaining a restricted product.

19 A safety plan, which is noted on that
20 form, that he does have a safety plan, and there is a safety
21 plan document in there. As well as searches -- remnants of
22 Google searches and Web pages recovered for tips on how to
23 kill someone, how to kill someone and make it look like a
24 suicide, and things of that nature. Specifically, the
25 recovered Web pages involved the search term "Tips from a hit

1 man on how to kill someone," the search term "How to kill
2 someone," "Even the smallest things can attack," a search for
3 "How to kill and make it look like a suicide".

4 A cookie, which is a text file, which was
5 stored on his computer because of -- as a result of the
6 search on -- and the cookie is named "Tips from a hit man on
7 how to kill someone."

8 A Google search for the term "Use of
9 carbon monoxide in suicide."

10 A Google search for "Payment of insurance
11 benefits of the case of a homicide."

12 And a Google search on "How to stage a
13 suicide."

14 Q. And the time frame that you found this research to
15 be taking place in, you were able to ascertain the last dates
16 of contact; is that correct?

17 A. For some of the items, yes. Not all of them.

18 Q. And what was the range of those last dates of
19 contact?

20 A. Many of the documents -- the actual documents,
21 which are the numbers on here, 1 through 18, are dated last
22 accessed in and around May 10, May 11, June 1st, 2008.

23 The Web searches, because of where the
24 data was located, there are no dates associated with that.
25 The data was located in an area of the hard drive referred to

1 as "unallocated space." That is space that had previously
2 been allocated and information had been stored there. The
3 information -- at some point the computer decided that -- or
4 the operator or whoever decided that information was no
5 longer needed, and the computer retitles that space as
6 "unallocated," thereby available for use for future.

7 MR. BUTNER: No further questions.

8 THE COURT: Any need to keep Detective Page
9 under his subpoena?

10 MR. SEARS: I don't believe so, Your Honor.

11 MR. BUTNER: I don't think so, Judge.

12 THE COURT: You are excused. You may step
13 down. Make sure that you leave us all of the marked
14 exhibits, please, and you may leave and go about your
15 business.

16 MR. BUTNER: Thank you, Judge.

17 THE COURT: Next witness.

18 MR. BUTNER: Detective Brown.

19 THE CLERK: Do you solemnly swear upon penalty
20 of perjury the testimony you are about to give will be the
21 truth, the whole truth, and nothing but the truth, so help
22 you God?

23 THE WITNESS: I do.

24 THE COURT: Mr. Butner.

25 MR. BUTNER: Thank you, Judge.

1 DOUGLAS DUMONT BROWN,
2 called as a witness, having been duly sworn, testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. BUTNER:

6 Q. Please state your name for the record.

7 A. Douglas Dumont Brown.

8 Q. And what is your occupation?

9 A. I'm currently a deputy with the Yavapai County
10 Sheriff's Office.

11 Q. And how long have you been a deputy with the
12 Yavapai County Sheriff's Office?

13 A. Since 2001.

14 Q. And while you've been with the Yavapai County
15 Sheriff's Office, did you also perform the duties as a
16 detective with the Yavapai County Sheriff's Office?

17 A. I did.

18 Q. From what date to what date, approximately?

19 A. January 2007 to September 2009.

20 Q. And in connection with the performance of your
21 duties as a detective with the Yavapai County Sheriff's
22 Office, did you have occasion to investigate the homicide of
23 Virginia Carol Kennedy?

24 A. I did.

25 Q. Would you tell us how you got involved in that

1 investigation.

2 A. I was contacted approximately 10:00 p.m. on the
3 night of the 2nd, 2008, and became involved in that
4 investigation.

5 THE COURT: July 2nd.

6 THE WITNESS: July. Sorry.

7 MR. BUTNER: Judge, before I go further, I'd
8 just ask the Court to take judicial notice of this witness's
9 testimony at the Simpson hearing and also at grand jury.

10 THE COURT: Mr. Sears, any objection to taking
11 judicial notice of his prior testimony?

12 MR. SEARS: I am reading it right now.

13 None, Your Honor. Thank you.

14 THE COURT: I will take notice of what he has
15 already testified to under oath in the grand jury proceedings
16 and in the Simpson hearing.

17 MR. BUTNER: Thank you very much.

18 Q. So at approximately 10:00 p.m. on July 2nd of
19 2008, you were contacted about this particular incident?

20 A. Correct.

21 Q. And what did you do?

22 A. I arrived at the scene on Bridle Path at
23 approximately 10:35 p.m.

24 Q. When you arrived at the scene at Bridle Path, what
25 did you do at that point?

1 A. I was walked through the scene, we went inside,
2 and I was kind of given a brief summary of what had been
3 found and what had taken place prior to my arrival.

4 Q. And was the body still present at that time?

5 A. It was.

6 Q. Okay. And would you describe for us what it
7 looked like?

8 A. At the time, I saw a white female, the right side
9 of her face was on the carpet. The torso was twisted with
10 the right side down, and the left side of the lower
11 extremeties were against the carpeting.

12 THE COURT: Against what?

13 THE WITNESS: The carpeting.

14 BY MR. BUTNER:

15 Q. And were there injuries apparent to this white
16 female?

17 A. Yes. To the -- I could see injuries to the left
18 side of the skull.

19 Q. What type of injuries did you see?

20 A. It looked like a laceration.

21 Q. Was there just one laceration, two?

22 A. At that time I saw two.

23 Q. Two lacerations to what side of the skull?

24 A. The left side, above the eye.

25 Q. And were you able to note deformity of any kind to

1 the skull?

2 A. Not at that time.

3 Q. And if you would, describe the scene for us,
4 please.

5 A. The residence -- the room that appeared to be the
6 apparent scene was at the northeast corner of the house,
7 which -- it's a bedroom that was -- that had some office-type
8 things in it -- a computer, a desk, some shelving units.

9 That door was -- that office door was
10 open, the interior door was open. There were three storage
11 containers just outside in the hallway. There was a ladder
12 that was propped up against the wall of the open door.

13 The body was lying next to the desk, and
14 there was a swivel chair just to the north of the body.
15 There were two shelving units that were tipped over, one
16 against the other, and the other was pushed against a wall.

17 Q. In addition to the injuries that were observed to
18 left side of the head, did you observe any other injuries to
19 the victim?

20 A. Not at that time. After -- when the body was
21 removed, at that time I noticed more injuries.

22 Q. Did you attend the autopsy?

23 A. Yes, I did.

24 Q. Is that when you noticed more injuries?

25 A. No. When we were removing the body from the

1 floor.

2 Q. What injuries did you notice when you were
3 removing the body from the floor?

4 A. At that time, I could see injuries to the right
5 side of the skull, also.

6 Q. What type of injuries did you observe to the right
7 side of the skull?

8 A. Again, it appeared to be lacerations.

9 Q. And how deep were these lacerations to the right
10 side?

11 A. It was difficult to tell, due to the hair being
12 blood-soaked.

13 Q. Okay. And could you tell how deep the lacerations
14 were to the left side?

15 A. No, I could not at that time.

16 Q. Not at that time.

17 Did you see any other injuries on the
18 body of the victim, aside from injuries to the skull?

19 A. Not while on scene. I just noticed that there was
20 blood on the legs, blood on the arms, but I wasn't able to
21 tell the injuries at that time.

22 Q. Okay. And you then went and attended the autopsy?

23 A. Correct.

24 Q. And what injuries did you see when you attended
25 the autopsy?

1 A. Once the right arm was cleaned up, there was
2 injuries to the -- kind of slender injuries to the right
3 forearm. There was some abrasions to the -- I believe the
4 right leg, just underneath the short line. And then once the
5 hair was kind of shaved away, you could tell more damage to
6 the skull.

7 Q. Were those injuries to the right forearm area --
8 would you describe them more specifically to us, please.

9 A. To me they appeared to be like what would be
10 defensive-type wounds. They was going across almost parallel
11 with the arm. Slender. I would say quarter-inch to
12 half-inch in diameter, it looked like, between the markings,
13 and there was two distinct separate wounds. And then there
14 was some bruising on the bicep area.

15 Q. The bruising in the bicep area, was it on the
16 interior, or the exterior, or where, if you could describe
17 it?

18 A. On the exterior portion of the arm.

19 Q. And on that bruising on the exterior area, did the
20 rod-like injuries extend up toward that area?

21 A. It appeared to, yes.

22 Q. At some point in time did you take a golf club and
23 compare it to those injuries?

24 A. Later. Like a week or two weeks later, yes.

25 Q. And how did the golf club compare to those

1 injuries?

2 A. It appeared to be consistent with those injuries.

3 Q. Who was the first person or party, so to speak, to
4 suggest that a golf club might have caused those injuries?

5 A. Dr. Keen.

6 Q. Were you there when he did that?

7 A. Yes, I was.

8 Q. Did Dr. Keen point out any other types of injuries
9 in addition to those rod-like injuries and the upper arm
10 injury that appeared to be consistent with the golf club?

11 A. When the hair was removed from the scalp, there
12 was some curvatures that he thought would be possibly
13 consistent with a golf club head.

14 Q. In fact, was a golf club head matched to those
15 curvatures at some point in time?

16 A. Initially, we didn't have a golf club at the
17 autopsy, but a week or two weeks later, we brought one in,
18 and it appeared to be somewhat consistent.

19 Q. Did you see anything inconsistent when the golf
20 club was matched to those injuries?

21 MR. SEARS: Foundation.

22 THE COURT: Any particular issue?

23 MR. SEARS: One or two questions on voir dire?

24 THE COURT: You may.

25 MR. SEARS: Thank you.

1 VOIR DIRE EXAMINATION

2 BY MR. SEARS:

3 Q. Deputy Brown, you are not a trained forensic
4 pathologist; are you?

5 A. No, sir.

6 Q. You have no medical training whatsoever; is that
7 right?

8 A. No, sir.

9 Q. Is that correct?

10 A. That's correct.

11 Q. And have you received any specialized training in
12 determining the object or objects that may cause blunt-force
13 trauma to a person's head?

14 A. I have no specialized training, no.

15 Q. Is your testimony here only to what you could see?
16 You saw the golf club near the -- near the fractures in the
17 skull?

18 A. That's correct.

19 MR. SEARS: Foundation.

20 THE COURT: Sustained. It would be appear to
21 be cumulative to Dr. Keen's testimony, in any event.

22 MR. BUTNER: Okay.

23 DIRECT EXAMINATION RESUMED

24 BY MR. BUTNER:

25 Q. You were out at the scene and investigated the

1 scene; is that correct?

2 A. Correct.

3 Q. Did you find evidence of injury to the victim at
4 the scene aside from the victim's body?

5 A. Besides the victim's body, no.

6 Q. You didn't find blood anyplace else besides on the
7 victim's body?

8 A. There was blood in the room that she was found in.

9 Q. Okay. Where was that blood located?

10 A. There was blood on all four walls, blood on a desk
11 that she was lying next to, blood on the carpeting, blood on
12 the three tubs that were outside in the hallway, blood on the
13 shelving unit, and some other items that were just in the
14 immediate area.

15 Q. Okay. Let's talk about that. The three tubs
16 outside in the hallway, were they in the hallway outside of
17 the room in which her body was located?

18 A. Correct.

19 Q. How far away from the victim's body were these
20 tubs?

21 A. Approximately three feet.

22 Q. Three feet?

23 A. Approximately.

24 Q. Okay. And you said there was blood on all four
25 walls?

1 A. Correct.

2 Q. Okay. Would you describe the distance from the
3 body that these blood spots were found?

4 A. I would say the furthest wall, distance would be
5 approximately six feet.

6 Q. The furthest is six feet?

7 A. Approximately.

8 Q. So this room was six feet wide by some other size?

9 A. No. She was not directly in the middle of the
10 room, but she was -- depending on the body's positioning, her
11 head was closest to the west wall, and the legs were going
12 out to the middle, for the most part.

13 Q. Okay. Tell me, though, the place where blood was
14 found in that room.

15 A. On the west wall against the door, and where the
16 door was closed against the wall; the north wall by the
17 exterior door; on the east wall just -- I think there was
18 some spots just below the window; and the south wall where
19 the closet is located, there was a bunch of blood on the wall
20 section before the doorway.

21 Q. The blood that was found, this is a room that's
22 adjacent to a hallway; correct?

23 A. Correct.

24 Q. And those containers were out in the hallway?

25 A. Correct.

1 Q. And the victim's head was a distance of
2 approximately how far away from those containers?

3 A. Approximately three feet.

4 Q. Three feet from those containers.

5 And the victim's head was approximately
6 how far away from the doorway exiting that room outside?

7 A. Approximately six feet.

8 Q. Okay. And there was blood found over by that
9 door?

10 A. Correct.

11 Q. And you said on the north wall by the door?

12 A. Correct.

13 Q. Was this smeared blood, or blood droplets or blood
14 splatter or blood spatter? Would you describe it for us,
15 please.

16 A. It was most likely blood spatter. And there was a
17 reclining chair or a lounge chair that was there that also
18 had spatter on it.

19 Q. And "blood spatter," what is your understanding as
20 to what that term means?

21 A. Blood that, for the most part, was projected off
22 something or was flung from something.

23 Q. Flung from something other than the victim?

24 A. Or from the victim.

25 Q. So it could have been blood that flew across the

1 room from a blow to the victim's head?

2 A. It could be, yes.

3 Q. Or it could be blood that was slung across the
4 room from the object that struck the victim. Is that what
5 you are telling us?

6 A. Correct.

7 Q. Are you aware of any other mechanism by which that
8 blood could have gotten across the room to the door on the
9 opposite side from the hallway?

10 A. There was blood -- it appeared to be a blood drop
11 just below the -- just prior to the exterior door, and that
12 appeared to be something that just went straight down. And
13 then outside of that door, there was a blood -- what appeared
14 to be a blood drop on the concrete patio, so outside that
15 door.

16 Q. So that appeared to be blood that was on some
17 object or some person that just dripped off of them?

18 A. Correct.

19 Q. Falling straight down, in other words?

20 A. Correct.

21 Q. Was there any blood on the door handle?

22 A. There was no blood on that door handle, no.

23 Q. And yet there was at least a drop of blood outside
24 that door?

25 A. Correct.

1 Q. And a drop of blood just inside that door?

2 A. Correct.

3 Q. Have you had specialized training in homicide
4 investigation?

5 A. No, I have not.

6 Q. Were you assisted by people that had specialized
7 training in homicide investigation?

8 A. Yes, I was.

9 Q. Were any theories offered as to how that blood got
10 straight down just before the door going outside and then the
11 blood dropped just outside the door going to the outside?

12 A. The theory was that someone exited out that door,
13 and blood dropped from something and that happened.

14 Q. Was there a theory as to why there wasn't any
15 blood on the door handle?

16 A. At the time we thought possibly if you're wearing
17 gloves or used something so you wouldn't transfer blood.

18 Q. Have you found anything to disprove that theory at
19 this point in time?

20 A. No, sir.

21 Q. Okay. Now, we talked about the blood on the
22 containers in the hallway and the blood on the wall -- the
23 north wall, so to speak, by the door that goes outside;
24 correct?

25 A. Uh-huh.

1 Q. Is that yes?

2 A. That's correct.

3 Q. Okay. And then the droplets on the inside of the
4 door and the droplet on the outside of the door; right?

5 A. Correct.

6 Q. Okay. And what pieces of furniture were located
7 in that room?

8 A. There was a swivel desk, a white -- I think it was
9 leather fabric, a chair against the north wall, two large
10 bookshelves that had nothing in them and the shelves were
11 removed at the time, a small shelving unit against the east
12 wall, and then miscellaneous books -- or books in boxes that
13 had miscellaneous books and other items and some clothing
14 items.

15 Q. Okay. Was there blood on the desk?

16 A. Yes, there was blood on the desk.

17 Q. Would you describe what the blood was like on the
18 desk.

19 A. The side section of the desk, there was blood that
20 was against the edge and appeared to go down the side of the
21 desk. When I say "go down," it appeared that it was dripping
22 or -- I think "dripping" is the best word.

23 Q. Was there any blood on top of the desk?

24 A. Just on the top section of the desk, and then
25 there was blood --

1 Q. You said just on the top section of the desk?

2 A. On the top section of the desk, and then there was
3 right there at the edge, and then there was blood splatter
4 and a large section of blood -- coagulated blood on sections
5 of the top portion of the desk, also.

6 Q. So when you say coagulated blood, you mean blood
7 in pools? It coagulated?

8 A. Yeah, it was -- kind of large amounts. It wasn't
9 like a drop or anything. It was chunks, for the most part.

10 Q. And relative to the desk, what was the position of
11 the victim's body? If you could describe that for us,
12 please.

13 A. The desk was against the west wall with the edge
14 where the blood was kind of facing south. The victim's head
15 was just to the edge of that side and the edge where most of
16 the blood was located.

17 And then her body was kind of going
18 towards the east.

19 Q. Okay. Her head, if I understand your testimony,
20 was in close proximity to the corner portion of the desk?

21 A. Correct.

22 Q. Did you see any indication that her head had
23 struck the corner portion of the desk?

24 A. It appeared that it struck the corner portion of
25 the desk with how the blood was kind of pushed in or sprayed

1 into the edge and into the underside of the overhang of the
2 lip of the desk.

3 Q. So the top of the desk overhanged or overhung the
4 lower portion; is that correct?

5 A. Correct.

6 Q. And there was a point there where the corner of
7 the desk was?

8 A. Correct.

9 Q. And if I understand your testimony, it appeared as
10 if her head had struck that point area of the desk?

11 A. Correct. And there was blood on the edge, the
12 side surface, and then underneath the overhang, and then it
13 kind of pooled and dripped down, going down the side.

14 Q. Did you see what appeared to be a corresponding
15 injury to any portion of the victim's body from that corner
16 of the desk?

17 MR. SEARS: Foundation. Beyond the scope of
18 his expertise. Dr. Keen has already testified about that
19 injury.

20 THE COURT: Overruled. I think in terms of
21 trying to make things correspond, I tend to agree with what
22 Mr. Sears is saying.

23 If you could rephrase the question so
24 that it's descriptive, rather than diagnostic.

25 MR. BUTNER: Sure.

1 Q. Did you see an injury or injuries on the victim
2 that appeared to have been caused by the desk?

3 MR. SEARS: Same objection.

4 THE COURT: Sustained. That seems to me to be
5 diagnostic.

6 BY MR. BUTNER:

7 Q. Dr. Keen didn't visit the scene; did he?

8 A. No, he did not.

9 Q. You were at the scene; right?

10 A. Correct.

11 Q. You saw the victim's body in close proximity to
12 the desk; right?

13 A. Correct.

14 Q. Approximately how far away from the desk was it?

15 A. It was just -- just off side the desk, so a couple
16 of inches.

17 Q. Inches from this corner portion of the desk?

18 A. Correct.

19 Q. Was there any injury on the victim that was in
20 close proximity to the desk?

21 A. Her skull.

22 Q. And any particular injury on her skull that was in
23 close proximity to the desk?

24 A. From the position it was in, or it was lying at
25 the time, just the injuries to the left portion that I could

1 see.

2 Q. Injuries to the left portion of her skull?

3 A. Correct.

4 Q. And when you say injuries to the left portion of
5 her skull, were you able to see the front part of her left
6 skull, so to speak?

7 A. The area just above the eye. That is the one
8 that -- right here, and then just above the head -- or just
9 above the skull.

10 Q. So you saw an area just above her eye that was
11 injured?

12 A. Yes.

13 Q. And when you saw that injury, what did it look
14 like?

15 A. When it was cleaned up, it looked -- the one right
16 above the eye is more of a square laceration or cut in the
17 scalp.

18 Q. From your layman's point of view, did that seem to
19 match the corner of the desk?

20 MR. SEARS: Objection. Foundation.
21 Relevance.

22 THE COURT: Overruled.

23 You may answer.

24 THE WITNESS: It would be the edge of the
25 desk, yes.

1 BY MR. BUTNER:

2 Q. When you say "the edge of the desk," what portion
3 of the edge of the desk are you speaking of?

4 A. The top portion where it overhangs this edge right
5 here.

6 Q. And did you see blood in that particular area?

7 A. Yes.

8 Q. We have been talking about the location of blood
9 in this scene. You indicated that there was blood on all
10 four walls.

11 A. Correct.

12 Q. So I take it there was blood on the wall near
13 where the desk was located?

14 A. Correct.

15 Q. Would you describe that blood for us, please.

16 A. That was where the door is closed against the
17 wall. There is a short section of wall that is between the
18 edge of the door and the edge of the desk. And there was
19 like blood spatter or spray on that section of the wall.

20 Q. So this would be where the back of the desk was up
21 near the wall?

22 A. Correct.

23 Q. Okay. And how high off the floor was this blood
24 spray or spatter?

25 A. Approximately three feet.

1 Q. And where else on that wall was there blood, if
2 anyplace?

3 A. Against that door, which was against the wall.
4 And I believe there was also some against where the exterior
5 door -- close to where the exterior door is, if not on the
6 wall, just close to the wall.

7 Q. And that was at the opposite side of the room; is
8 that correct?

9 A. That's on like the northwest corner of that room.

10 Q. Is that on the opposite side of the room?

11 A. No, along the same wall line as the desk.

12 Q. We have the hallway on one side, if we are facing
13 west; right?

14 A. Correct.

15 Q. And we have the exterior door on the opposite
16 side; right?

17 A. The exterior door is on the north side. Correct.

18 Q. You indicated that there was blood on the wall
19 right here by that doorway going into the hall?

20 A. Correct.

21 Q. And if I understood your testimony just now, you
22 indicated there was blood over on the wall on the opposite
23 side of the desk?

24 A. Correct. That was where the window is located.

25 Q. The window?

1 A. There is a window on the east wall.

2 Q. Okay. And so approximately how far away from the
3 victim's head was that blood?

4 A. From her head?

5 Q. Correct.

6 A. Approximately eight or nine feet.

7 Q. Did you see blood coming from the victim any other
8 place besides her head?

9 A. Not while on scene, no.

10 Q. So her head was on the ground -- on the floor by
11 the corner of the desk?

12 A. Correct.

13 Q. And was she laying in a pool of blood?

14 A. Her hair was soaked with blood, and there was
15 blood on all the items and objects around her, yes.

16 Q. And then there was blood spray on the wall just on
17 the back side of the desk, nearly adjacent to her head?

18 A. Correct.

19 Q. And then there was blood spray on the opposite
20 side of the desk?

21 A. Just a couple of spatter spots, yes.

22 Q. And then there was blood over by the door --

23 A. Correct.

24 Q. -- on the opposite wall?

25 And how far away was that from her head?

1 A. That was about six feet.

2 Q. The door, on the opposite side of the room?

3 A. Correct.

4 Q. Okay. And then we have been talking about -- the
5 wall that the desk is against that you have referred to as
6 the "west" wall, I think; right?

7 A. Correct.

8 Q. The opposite wall, across the way, that would be
9 the east wall, then; right?

10 A. Correct.

11 Q. Was there blood over there, too?

12 A. That's the window. That is where there is a
13 couple of spatter spots.

14 Q. So that is on the opposite side of the room from
15 where her body was located?

16 A. Correct.

17 Q. What position did the desk occupy in this room?
18 Was it against the west wall, or was it positioned in a
19 different way?

20 A. It was against the west wall, and there is just
21 enough room for the interior door and the exterior door to
22 open and have the desk in between the two.

23 Q. And this desk was approximately how big in
24 measurement, so to speak?

25 A. I would say about five-feet long and about

1 two-and-a-half feet wide or deep.

2 Q. And in between the west wall and the east wall,
3 was there any other furniture?

4 A. The shelving units had been positioned in the
5 middle of the room, and there was miscellaneous boxes in that
6 area, also.

7 Q. And was there any blood located on those?

8 A. Yes.

9 Q. Where?

10 A. On the boxes -- those were coming out of the
11 closet and kind of into the room, so there was just blood
12 kind of -- just on those, on top of those, on the sides of
13 those.

14 The one shelving unit that was more in
15 the middle of the room, there was some spatter and drops and
16 runs on that.

17 And the one that was tipped over, I
18 believe there was also a drop or a spatter on that, as well.

19 Q. So there was blood spattered or splashed all the
20 way around the body of the victim?

21 A. Correct.

22 Q. At a distance of -- how far was the farthest
23 point?

24 A. If you're going from the head, it's a little bit
25 longer; but from the middle of the body, I'd say no more than

1 six feet in any direction.

2 Q. How about from the head, because you didn't see
3 blood coming from any other portion of the body; right?

4 A. Approximately within eight or nine feet.

5 Q. So blood was splashed as far away as eight or nine
6 feet?

7 A. Correct.

8 Q. And how high on the shelving unit did this blood
9 go?

10 A. I would say between three or four feet.

11 Q. Is that about as high as any of the splash marks
12 were of blood around the room?

13 A. No. There was some on the walls on the little
14 small section of the wall on the south face that were at
15 least six or seven feet high.

16 THE COURT: Which wall are you talking about
17 there?

18 THE WITNESS: That is the south wall where the
19 door entrance -- interior door is.

20 THE COURT: Go ahead.

21 BY MR. BUTNER:

22 Q. The south wall where the entrance from the hallway
23 comes in; is that correct?

24 A. Correct.

25 Q. And it was splashed as high as six or seven feet?

1 A. Correct.

2 Q. Where was it splashed six or seven feet high along
3 that wall?

4 A. Along the little section of wall between the
5 interior door and closet door.

6 Q. There is a kind of small section of wall there?

7 A. Correct.

8 Q. How wide is that section, approximately?

9 A. I believe it is 12 to 16 inches, I think.

10 Q. And did you formulate a theory as to what happened
11 in that room?

12 MR. SEARS: Foundation. May I have voir dire,
13 Your Honor?

14 THE COURT: No. Sustain the objection.

15 MR. SEARS: Thank you.

16 BY MR. BUTNER:

17 Q. In discovering this blood all over this room, what
18 did you do by way of investigation?

19 A. Then on scene at the time, the shelving units,
20 there was blood spatter on the one that was mostly in the
21 center. That spatter had hit the side of the shelving unit,
22 ran down, and appeared to have dried. And then that unit was
23 pushed over -- or it was over at the time that we saw it.
24 That drip wouldn't be consistent with the way it would have
25 hit if it either happened during or -- during the time that

1 the spatter happened or -- I am trying to say this best -- it
2 appeared that it dried and then it was pushed over or put
3 into the position that we found it. So it didn't appear that
4 that was consistent with the way it was originally.

5 Q. Let me ask you a couple of questions to try and
6 clear that up.

7 Were both shelving units tipped over?

8 A. One was pushed into the other, and that one was
9 then against the wall.

10 Q. Which wall was that one against?

11 A. It was in the corner -- pretty much the northeast
12 corner of that room.

13 Q. Which would be the opposite side wall from the
14 desk and the wall where the exterior door was located?

15 A. That's correct.

16 Q. The door that goes to the outside; correct?

17 A. Correct.

18 Q. And if I understood your testimony, there were
19 drip --- blood drip-mark patterns on both shelving units or
20 one?

21 A. There was one drip pattern on one shelving unit
22 that wouldn't be consistent with the position that we found
23 the shelving unit.

24 Q. Did it drip and go straight down the side of the
25 shelving unit?

1 A. If it would have been standing upright, yes.

2 Q. So it was, in other words, parallel with the
3 vertical units of the shelving unit?

4 A. Correct.

5 Q. Ran straight down the side?

6 A. Correct.

7 Q. And yet the shelving unit was tipped over on its
8 side at an angle?

9 A. That's correct.

10 Q. And was there any further dripping of that blood
11 from that straight line?

12 A. No.

13 Q. So what did you conclude as a result of that?

14 A. That the shelving unit was -- position had changed
15 after the blood had dried.

16 Q. Did you see any other examples of things that did
17 not seem to be consistent in this scene?

18 A. The ladder, which was positioned somewhat over the
19 body and over the interior door, had no apparent blood on it.
20 And that was in the same -- the current position it was found
21 would be in the same lines as other areas that were -- that
22 had blood on them.

23 Q. Including the shelving unit?

24 A. It wouldn't be in the same long line as -- that
25 would be the lines of the plastic tubs that were in the

1 hallway, the door, and the side wall between the door and the
2 closet door.

3 Q. The ladder was stretched across the doorway?

4 A. Correct.

5 Q. And there was blood out in the hallway on those
6 containers?

7 A. Correct.

8 Q. But there was no blood on the ladder?

9 A. Correct.

10 Q. And so what did you conclude from that?

11 A. That the ladder was not in that position when
12 whatever happened, happened.

13 Q. Did you conclude that the ladder had been moved
14 after the homicide?

15 A. Yes.

16 Q. And similarly with the shelving units?

17 A. Correct.

18 Q. You filled out the yellow narrative tag for the
19 victim's body; is that correct? Do you remember that?

20 A. I believe I did.

21 Q. You went to the autopsy and --

22 A. Yes.

23 Q. -- did you provide a brief narrative, if you can
24 recall, on that yellow tag, for Dr. Keen?

25 A. I don't recall what narrative I put on that.

1 Q. Okay. Do you recall telling Dr. Keen what you had
2 observed at the scene?

3 A. Yes.

4 Q. In summary, so to speak?

5 A. Yes, I did.

6 Q. What did you tell him?

7 A. I tried to explain just the location of the body
8 and everything in the surrounding areas.

9 Q. And how did you describe the scene, so to speak,
10 in general terms?

11 A. Just with her -- the body of the victim lying on
12 the floor with the desk -- the proximity to the desk, the
13 blood that was on the desk, the way we found the shelving
14 units, and the way we found the ladder.

15 Q. Did you indicate to Dr. Keen that it was your
16 belief that the scene had been staged?

17 A. Yes.

18 Q. So have we described the entirety of the scene in
19 that particular room?

20 A. Just -- the only thing I can add is with the
21 position of her body, when that was moved and then placed in
22 the bag and removed from the room, I recall a large pool of
23 blood that would have been underneath her stomach area, just
24 above the hips, but there was no injuries to that area of her
25 body.

1 Q. No corresponding wound in that area?

2 A. Correct.

3 Q. What did you conclude from that?

4 A. That the body was not in that position. It had to
5 be moved to either cover that or -- there is no way. It
6 wasn't blood from the body. So the body was moved over that
7 position. So either the body was moved over it, or the
8 position changed after that time.

9 Q. So her head -- there wasn't blood coming from any
10 other portions of her body aside from her head; is that
11 correct?

12 A. At the scene, I didn't notice anything. When we
13 got to -- for the autopsy, when her leg was cleaned up, there
14 appeared to be an abrasion or scrape on her -- I believe it
15 was her right hip area.

16 Q. And was that bleeding?

17 A. It was -- blood wasn't freely coming from it, but
18 it was --

19 Q. Oozing, so to speak?

20 A. Yeah, I would say that.

21 Q. Was it of sufficient density that it would have
22 caused that pool of blood underneath the victim's body?

23 A. No.

24 Q. The head was the only place that had that extent
25 of an injury; is that correct?

1 A. Correct.

2 Q. So after observing all of this at the scene, did
3 you conduct further investigation around the premises?

4 A. That night or that day, there was -- personally, I
5 did not. I was involved in the tire tracks and the shoe
6 tracks that were located in the ranchland behind the house.
7 But I was told what was going on with that.

8 Q. You did not participate in that portion of the
9 investigation; is that correct?

10 A. Correct.

11 Q. What were you doing while people were
12 investigating tire tracks and shoe tracks, so to speak?

13 A. We were at the -- at the scene of the house, I was
14 going through the house, and then I went to the autopsy.

15 Q. Did you find anything of further significance when
16 you went through the house?

17 A. Later. A different day, yes.

18 Q. On what day?

19 A. On July 6, 2008.

20 Q. What did you find on July 6, 2008, of
21 significance?

22 A. There were three light bulbs that were unscrewed
23 from the laundry room and one light bulb that was missing
24 that we thought was significant.

25 Q. How was it that you found these particular items

1 out?

2 A. While doing a walk-through, we noticed that the
3 lights did not work in the laundry room, and we asked the
4 gentleman that was living in the guest house if that was
5 normal, and he advised it was not.

6 Q. This gentleman being Mr. Knapp?

7 A. Correct.

8 Q. Jim Knapp?

9 A. That's correct.

10 Q. Okay. And in going through the house, did you
11 find anything of significance in the kitchen area?

12 A. No. And by significance, I mean nothing blood or
13 any type of relation like that, no.

14 Q. You found out how this homicide was initially
15 reported, did you not?

16 A. Yes, I did.

17 Q. And how was that?

18 A. Miss Kennedy's mother contacted -- eventually
19 contacted the sheriff's office and advised that she was on
20 the phone with Miss Kennedy. And during the call to our
21 dispatch, she advised that Miss Kennedy screamed and said
22 "Oh, no," and the phone disconnected.

23 Q. This is the victim's mother?

24 A. Correct. Ruth Kennedy.

25 Q. And her name is Ruth Kennedy; is that correct?

1 A. Correct.

2 Q. And did Ruth Kennedy provide information as to
3 what it sounded like to her that her daughter was doing while
4 she was talking with her on the phone?

5 A. When I later spoke with Miss Kennedy -- Ruth
6 Kennedy -- she advised that she believed that her daughter
7 was in the kitchen fixing a salad while she was on the phone.

8 Q. What did she tell you caused her to think that?

9 A. She heard water running.

10 Q. And did you find any indication that in fact her
11 daughter had been fixing a salad in the kitchen?

12 A. There was a pre-packaged salad that was in the
13 kitchen in a little plastic container. So I don't know if
14 she was fixing it or just rinsing that.

15 Q. Where was that located in the kitchen?

16 A. In the sink.

17 Q. And her daughter was on the phone, as Ruth Kennedy
18 described; is that correct?

19 A. Correct.

20 Q. Did you find the telephone in proximity to the
21 body?

22 A. There was a cordless home phone that was -- there
23 was the body, then the swivel chair, and the phone was on the
24 floor right there.

25 Q. And where was the base for that phone located?

1 A. There is a base on the east wall. It was plugged
2 in. And there's -- it is just a small handset base. That
3 was in the windowsill.

4 Q. And was this the phone from that particular base?

5 A. It appeared to be the phone from that particular
6 base.

7 Q. Was there also a base for the cordless phone
8 located in the kitchen?

9 A. Yes.

10 Q. And was the phone in the cradle, so to speak, for
11 that base?

12 A. There was a phone in the cradle, yes.

13 Q. So you found that the lights didn't work when you
14 went on a walk-through, accompanied by Mr. Knapp; is that
15 correct?

16 A. Correct.

17 Q. And did you note any other items or situations of
18 evidentiary significance?

19 A. There is a door that goes from kind of a hallway
20 where a closet is, that goes outside to a direction where the
21 garage is. On that door's threshold, it appeared to be blood
22 that was on the threshold and possibly the deadbolt assembly
23 for that door, and on a section of the wall next to that
24 door.

25 Q. What section of the wall next to the door?

1 A. The interior portion of the -- that they got the
2 curtain molding there. So on the lower section of that wall
3 by the door.

4 Q. Is this the molding by the handle side of the
5 door?

6 A. Correct.

7 Q. On the inside?

8 A. Correct.

9 Q. You said that there was blood on the threshold,
10 too?

11 A. Correct.

12 Q. Is that on the inside threshold or the outside
13 threshold?

14 A. As you open the door, the threshold for the --
15 where would you step, it's located on that section.

16 Q. Right underneath the door when it is closed?

17 A. Correct. And at that time, it appeared to be
18 blood. We weren't sure at that time.

19 Q. Did you have it analyzed?

20 A. Yes.

21 Q. And was it blood?

22 A. The deadbolt and the threshold and the wall were
23 all -- yes, they came back to be blood.

24 Q. Whose blood?

25 A. Carol Kennedy's blood.

1 Q. And did you find any other DNA component with that
2 blood on the door handle besides Carol Kennedy's?

3 A. The door handle itself, yes, had mixture of DNA
4 profiles.

5 Q. Were you able to -- was the lab able to ascertain
6 how many mixtures, so to speak -- how many people's blood?

7 A. Two different labs, I believe. I believe this is
8 right. D.P.S. Lab believed there to be two profiles. I
9 believe Sorenson for the handle -- I believe there were three
10 profiles.

11 Q. Three DNA profiles. I shouldn't have said
12 "blood." I should have said "DNA"; correct?

13 A. Correct.

14 Q. Sorenson thought three DNA profiles; D.P.S.
15 thought two DNA profiles; is that correct?

16 A. Correct.

17 Q. Were they able to match any of those profiles with
18 anybody, including the defendant, Mr. Democker?

19 A. No. I believe they were able to make exclusions
20 but not matches.

21 Q. And who was excluded?

22 A. Can I refer to my notes on that?

23 Q. Please do.

24 A. (Whereupon, the witness reviews a document.)

25 D.P.S. was able to exclude Mr. Democker

1 from the sample.

2 Sorenson Labs was able to exclude
3 Mr. Democker and Mr. Knapp. And then they were also able to
4 exclude the unidentified DNA that was located from the
5 fingernails.

6 And I believe there is only two samples
7 for Sorenson, also. I think I incorrectly said three.

8 Q. And you indicated that there was an exclusion of
9 DNA from the fingernails. You are talking about the
10 fingernails of the victim; is that correct?

11 A. Correct.

12 Q. Which hand?

13 A. Her left hand.

14 Q. There was some DNA found beneath the fingernails
15 of Carol Kennedy's left hand?

16 A. Correct. A full profile was found.

17 Q. You attended the autopsy; is that correct?

18 A. Correct.

19 Q. And were you there for the entire autopsy?

20 A. Correct.

21 Q. When the victim's head was cleaned up, so to
22 speak, as the autopsy was progressing, were you able to
23 observe the victim's injuries at that time?

24 A. Yes.

25 Q. And did you note any deformity to her skull or

1 face?

2 A. There was extensive deformity to the skull.

3 Q. Would you describe it for us, please.

4 A. Just the -- sections of the skull, the only reason
5 they were staying intact is because of the scalp and the
6 skin. So they were freely moving inside.

7 Q. And was the skull misshapen, so to speak, from
8 these injuries?

9 A. Yes, it was.

10 Q. Would you describe that for us, please.

11 A. It didn't have a solid form. It was able to be
12 moved and pushed in, I guess.

13 Q. And what about the victim's face? Were there
14 injuries to the victim's face?

15 A. Just -- I recall over the left eye socket. And
16 there was bruising around the eyes, I believe.

17 Q. How about the victim's nose? Were there any
18 injuries to the victim's nose that you noted?

19 A. I don't recall any injuries to the nose.

20 Q. When you were at the scene of this homicide, did
21 you find indications that a struggle took place?

22 MR. SEARS: Foundation.

23 THE COURT: Overruled.

24 THE WITNESS: It was evident that, from what I
25 could tell, with the position of the body and where the pools

1 of blood was, it appeared that she possibly had just fallen
2 in the middle of the room.

3 The items that were positioned afterwards
4 would make it look like there was a struggle, but I think,
5 again, that was after the fact.

6 BY MR. BUTNER:

7 Q. But the victim's body, if I understood your
8 earlier testimony, had been moved; is that correct?

9 A. Correct.

10 Q. Do you know how that took place?

11 A. I don't know how it took place, no.

12 Q. Okay. Her body wasn't located in the middle of
13 the room?

14 A. It was -- parts of the body were located in the
15 middle of the room.

16 Q. Well, you said that there were indications that
17 she had fallen in the middle of the room; right?

18 A. You are correct.

19 Q. What were those indications?

20 A. Just the pool of the blood that would have been on
21 the left side of her body at that time.

22 Q. So that was the pool of blood that you found
23 underneath her body when you moved it?

24 A. Correct.

25 Q. Okay. Do you know how she got from that position

1 where that pool of blood was located to the position where
2 she was ultimately found?

3 A. No. She just had to be moved. I don't know how
4 that occurred.

5 MR. BUTNER: Could I have just a moment, Your
6 Honor?

7 THE COURT: You may.

8 MR. BUTNER: Thank you. Thank you, Your
9 Honor.

10 Q. Dr. Keen brought up the possibility that these
11 injuries were caused by a golf club; is that correct?

12 A. Correct.

13 Q. Did you conduct a portion of your investigation to
14 determine if there had been a golf club in the house or in
15 proximity to where this event occurred?

16 A. Yes, I did.

17 Q. Tell us what you did.

18 A. After Dr. Keen mentioned the possibility of a golf
19 club, we were contacted by the detectives that had completed
20 the search at Alpine Meadows, which was Mr. Democker's
21 residence. They indicated that they -- during their search
22 they saw a set of golf clubs and then a golf club cover sock
23 that was located in the garage.

24 Q. Where was this golf club cover or sock located in
25 the garage?

1 A. There is some shelving units that were in the
2 garage, and it was located on one of the shelves.

3 Q. And this was at Mr. Democker's residence at Alpine
4 Meadows?

5 A. Correct.

6 Q. Alpine Meadows is located in the Hassayampa
7 Country Club area?

8 A. Correct.

9 Q. So what did you do?

10 A. One of the detectives completed a search warrant
11 so we could go back to the residence and attempt to get any
12 items or golf-club related items, and also, I think shoes
13 were added into that search warrant.

14 And we responded back to the Alpine
15 Meadows address to attempt to locate that.

16 Q. Did you find -- first of all, did you find that
17 golf club sock or head cover?

18 A. No.

19 Q. And had a picture been taken of that?

20 A. A picture of the garage and that shelving unit was
21 taken during the search warrant, and we had that to compare
22 to -- what it looked like when we responded back.

23 Q. And was the golf club head cover in the garage
24 area at that time when you responded back?

25 A. No, it was not.

1 Q. What was the difference in time between the time
2 the picture was taken and the time that you responded back
3 looking for the golf club head cover?

4 A. Approximately two-and-a-half hours.

5 Q. So in that two-and-a-half hour period, the golf
6 club head cover was no longer on the shelf?

7 A. Correct.

8 Q. I asked you about looking for a golf club in the
9 residence where this homicide occurred. Did you do that?

10 A. Yes, we did.

11 Q. Did you find one?

12 A. We didn't find any in the residence or the garage
13 or the vehicles that were on scene.

14 Q. As part of your investigation, did you interview
15 people to see if a golf club had been at the residence at
16 some point in time?

17 A. Yes, I did.

18 Q. Who did you interview?

19 A. I had several people referenced that topic. Katie
20 Democker, which is the daughter; Jake Jenesak, which is a
21 boyfriend of one of the other daughters.

22 Q. That would be the boyfriend of Sharlot Democker?

23 A. Correct.

24 Miss Rene Gerard.

25 Q. All right. Anybody else that you interviewed in

1 connection with looking for the presence of a golf club?

2 A. Mr. Knapp.

3 Q. Okay. And anybody else?

4 A. I believe that is it.

5 Q. Okay. And what did you find out about Katie
6 Democker in regard to whether a golf club had been located at
7 the residence?

8 A. She was aware that her father had possibly taken
9 or had someone take over a golf club for a garage sale.

10 Q. She was aware of that. How was she aware? Did
11 her father tell her he was doing that?

12 A. She knew that her mom was preparing a garage sale,
13 and she knew that he had a golf club that was going to go
14 over there. I don't think she knew if he took it or if
15 someone else took it at the time.

16 Q. Right. But did her father tell her that he was
17 going to take a golf club over there for the garage sale?

18 A. I don't remember if her father told her that
19 directly.

20 Q. Do you need to refer a report for that
21 information?

22 A. I can.

23 Q. Do you know where to look?

24 A. Yes.

25 (Whereupon, the witness reviews a document.)

1 I just -- I don't -- I can't recall and I
2 don't have it written that information came directly from
3 Mr. Democker to Katie. I have input into my notes that she
4 just was aware that that happened.

5 Q. She was aware that what happened?

6 A. That a golf club went over to the house for a
7 garage sale.

8 Q. Okay. What did Jacob Jenesak tell you about the
9 golf club?

10 A. He stated that he was aware that Mr. Democker took
11 a golf club over for the garage sale.

12 Q. How was he aware of that?

13 A. I need to review my notes on that one, please.

14 Q. Okay. Sure.

15 A. (Whereupon, the witness reviews a document.)

16 Just from what I have written in my
17 report, Jacob advised that he never saw the golf club going
18 over there, but he said that -- he indicated that Steven had
19 given Carol the club.

20 Q. Was this from a statement that Mr. Democker made?

21 A. To Jacob, I believe.

22 Q. Yes.

23 A. Correct.

24 Q. Mr. Democker had told Jacob that he had given the
25 club to Carol Kennedy?

1 A. From what Jacob told us, yes.

2 Q. Okay. How about Rene Gerard? What did she tell
3 you about the golf club being present at the Bridle Path
4 residence?

5 A. (Whereupon, the witness reviews a document.)

6 I just recall that Miss Gerard was aware
7 that a golf club got over there, but I don't know what her --
8 how much information she knew about that.

9 Q. Did Mr. Democker ever tell you that he took a golf
10 club over there for a garage sale?

11 A. No.

12 Q. And you are not sure how Rene Gerard knew that he
13 took a golf club over there?

14 A. I can't recall. I am not sure.

15 Q. How about Mr. Knapp? What did Mr. Knapp tell you
16 about a golf club being at the residence?

17 A. He was not aware of a golf club being at the
18 residence.

19 Q. So you went back to Alpine Meadows looking for the
20 golf club head cover; is that correct?

21 A. That's correct.

22 Q. And it wasn't there.

23 A. That's correct.

24 Q. Did you ask Mr. Democker where the golf club head
25 cover was?

1 A. I was not able to ask Mr. Democker where it was.

2 Q. Did anybody, to your knowledge, at that point in
3 time?

4 A. No. Not at that time.

5 Q. Okay. And ultimately, was the golf club head
6 cover found?

7 A. Yeah.

8 Q. Where was it found?

9 A. With Mr. Sears.

10 Q. When was that discovered?

11 A. October 23rd.

12 Q. That's the time of Mr. Democker's arrest?

13 A. That's correct.

14 Q. Were you present when the golf club head cover was
15 discovered, so to speak?

16 A. No, I was not.

17 Q. Who handled that?

18 A. I believe, Detective Teresa Kennedy.

19 Q. Did you interview Rene Gerard about what happened
20 to the golf club head cover?

21 A. I was present during the interview, yes, with
22 Detective McDormett.

23 Q. Do you recall when that took place? You can look
24 at a report to determine the approximate dates.

25 A. It is not in my report, so I don't have that

1 information.

2 Q. You don't know when that took place?

3 A. No. I didn't write a report on that.

4 Q. Detective McDormett did?

5 A. Correct.

6 Q. And you don't have that report with you?

7 A. No.

8 Q. Was this prior to Mr. Democker's arrest?

9 A. It was after Mr. Democker's arrest.

10 Q. After his arrest. Sometime after October 23rd or
11 on that particular day?

12 A. It was after October 23rd.

13 Q. And in regard to the golf club head cover, what
14 did Rene Gerard tell you -- or tell Detective McDormett? Do
15 you recall?

16 If you don't, I will ask Detective
17 McDormett.

18 A. I don't recall.

19 Q. Okay. In regard to the DNA that was found under
20 the victim's left fingernail or nails -- was it a fingernail
21 or fingernails?

22 A. The lab advised that they were not able to tell me
23 if it was one single nail or not.

24 They received the clippings from the left
25 fingernails, and they got a sample from those clippings.

1 Q. Could have been one or more?

2 A. Correct.

3 Q. And this DNA remains unknown at this time; is that
4 correct?

5 A. They have it listed as "unidentified."

6 Q. Did you conduct an investigation concerning --

7 MR. BUTNER: Wait a minute. Could I have just
8 a moment, Your Honor?

9 THE COURT: Yes.

10 BY MR. BUTNER:

11 Q. Okay. In connection with the homicide, did you
12 interview Mr. Democker?

13 A. Yes, I did.

14 Q. When did you interview Mr. Democker?

15 A. My first contact would have been the night of
16 July 2nd, approximately -- just prior to midnight, I believe.
17 We had phone contact, and there was further interviews on the
18 morning of the 3rd, around 1:00 in the morning or so.

19 Q. Around?

20 A. 1:00 in the morning.

21 Q. If you would keep speaking up. Okay?

22 A. Sorry.

23 Q. You had a telephonic contact with Mr. Democker; is
24 that correct?

25 A. Yeah, first contact was telephonic.

1 Q. And where were you at the time of that contact?

2 A. Out at the scene at Bridle Path.

3 Q. Mr. Democker was not there?

4 A. Correct.

5 Q. How did this contact come about?

6 A. Sharlot was on the phone with Mr. Democker when
7 they pulled up to the house. The phone was dropped. Jacob
8 picked up phone, and then I was handed the phone.

9 Q. Okay. So this took place out in front of the
10 Bridle Path residence?

11 A. In the roadway; correct.

12 Q. And what did Mr. Democker tell you in this
13 conversation?

14 A. He just -- he asked about what was going on. He
15 had found out that -- through Sharlot -- that Carol had died.
16 So he kind of asked what was going on and asked if he could
17 come out to be with Sharlot.

18 Q. Anything further?

19 A. I can go into details, if you would like me to.

20 Q. Anything of significance, from your point of view,
21 at this point?

22 A. No.

23 Q. And did he come out to the scene, then?

24 A. Yes, he did. Approximately -- I think it was 20,
25 25 minutes later.

1 Q. All right. And then did you have an interview
2 with Mr. Democker after that?

3 A. Yes, I did.

4 Q. And where did that take place?

5 A. There on the roadside, and then later on at the
6 office -- the sheriff's office.

7 Q. And would you tell us what Mr. Democker told you
8 there at the roadside.

9 A. He explained -- initially, just asked him about
10 what his knowledge of Carol's day was. He indicated that he
11 had communication with Carol -- I believe it was just text
12 message that day -- and indicated what that communication was
13 about.

14 Q. What were they text messaging about?

15 A. It was in reference to Mr. Democker going to pick
16 up Katie's BMW, which was parked in the garage, and other
17 text messages reference the exchanging of monies.

18 Q. What did he indicate the text messages concerning
19 exchanging of monies were about?

20 A. Was reference the QDRO payment. And after the
21 distribution, there was a set up amount of money that was
22 going to be split between the two.

23 Q. Did he indicate that there was a disagreement
24 concerning the payments resulting from the QDRO?

25 A. I don't think he indicated that at that time.

1 Q. Okay. Did you ultimately find out that there was
2 such a disagreement?

3 A. Yes.

4 Q. Did you look at the texts between Mr. Democker and
5 Carol Kennedy?

6 A. Yes, I have seen those.

7 Q. Did that indicate there was a disagreement over
8 the payment of monies arising from the QDRO?

9 A. If I could look in my notes on the text, it would
10 be helpful.

11 Q. Would you, please.

12 A. (Whereupon, the witness reviews a document.)

13 The text messages themselves don't
14 indicate the dispute. Just the fact that he indicates the
15 exchanging of the money.

16 Q. And did you find out why Mr. Democker was picking
17 up Katie's BMW?

18 A. He indicated that since she was going to be out of
19 the country and he made payments on the insurance, that he
20 was going to use the vehicle down in Phoenix, and he could
21 store it in the underground parking down there in Phoenix,
22 for his work.

23 Q. Did he tell you when his daughter Katie was -- had
24 left the country?

25 A. He did indicate that she left the previous

1 Saturday.

2 Q. That would have been the 28th of June?

3 A. Correct.

4 Q. And did he indicate to you that he was aware that
5 Carol Kennedy was residing in the Bridle Path residence
6 alone, then, since Katie had left?

7 A. In the main residence itself, alone, yes.

8 Q. Mr. Knapp was in the guest house; is that right?

9 A. That's correct.

10 Q. Did you ask --

11 THE COURT: Before you go on, I presume you
12 have a bit more time to go on this.

13 MR. BUTNER: A bit more.

14 THE COURT: We're at about five to 5:00, and I
15 think everybody has had a pretty long day. Let's resume, if
16 you can remember your spot, tomorrow at 1:30.

17 MR. BUTNER: Thank you, Judge.

18 THE COURT: As previously discussed.

19 MR. SEARS: Your Honor, that is the scheduled
20 time for my juvenile matter. If we could make it perhaps
21 2:00 or 2:15?

22 THE COURT: Can do. Let's try two o'clock, as
23 soon as you can be up here afterwards.

24 MR. SEARS: Thank you. I will tell Judge
25 Brutinel I am needed someplace else. I am sure he will

1 understand.

2 THE COURT: I have that kind of relationship
3 with Judge Brutinel. I am sure he will release you as soon
4 as he possibly can.

5 Stand in recess.

6 (Whereupon, these proceedings were concluded.)

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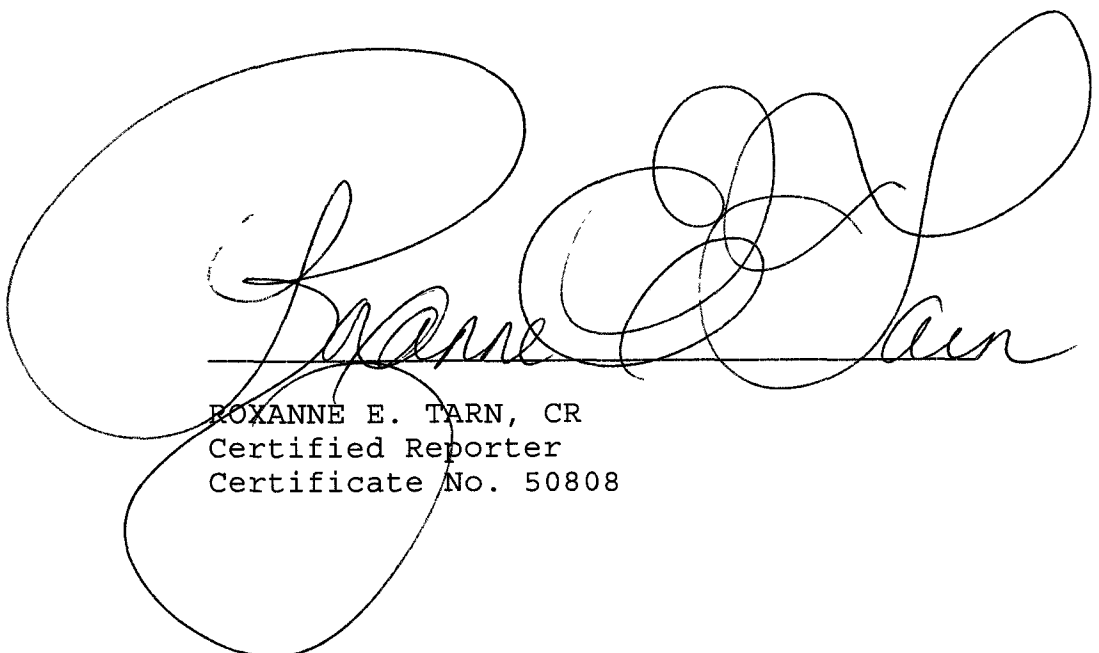
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C E R T I F I C A T E

I, ROXANNE E. TARN, CR, a Certified Reporter
in the State of Arizona, do hereby certify that the foregoing
pages 1 - 194 constitute a full, true, and accurate
transcript of the proceedings had in the foregoing matter,
all done to the best of my skill and ability.

SIGNED and dated this 12th day of November,
2009.



ROXANNE E. TARN, CR
Certified Reporter
Certificate No. 50808